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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 106

RHODE ISLAND HOSPITAL TRUST COMPANY, EXECUTOR OF GEORGE BRIGGS, DECEASED, PLAINTIFF IN ERROR,

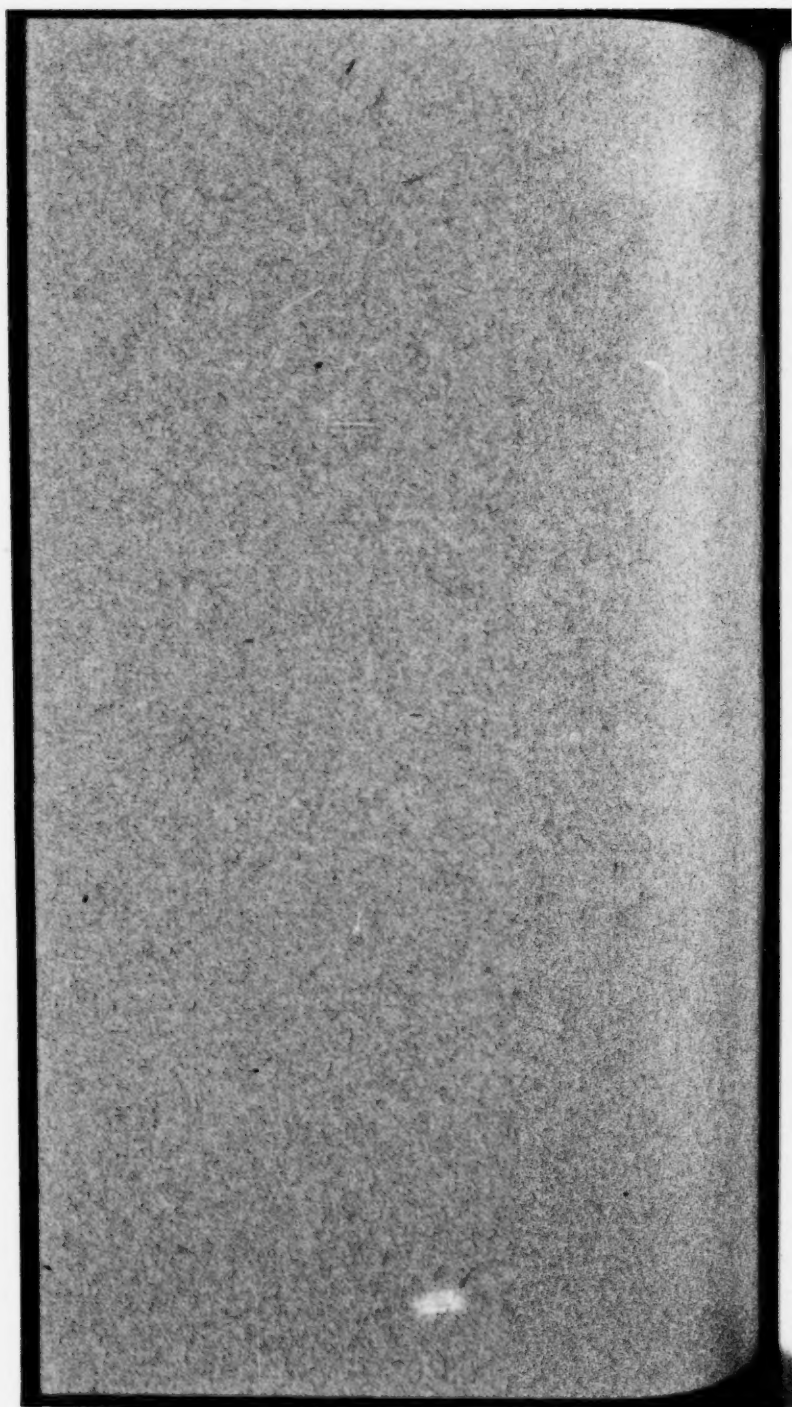
vs.

RUFUS A. DOUGHTON, COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

FILED JUNE 22, 1926

(30,436)



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[fol. 1] **IN SUPREME COURT OF NORTH CAROLINA**

RHODE ISLAND HOSPITAL TRUST COMPANY, EXECUTOR OF GEORGE BRIGGS, Deceased,

vs.

RUFUS A. DOUGHTON, Commissioner of Revenue of the State of North Carolina

PETITION FOR WRIT OF ERROR

To the Honorable W. A. Hoke, Acting Chief Justice of the Supreme Court of the State of North Carolina:

Now comes the Rhode Island Hospital Trust Company a corporation of the State of Rhode Island, as it is executor of the will of George Briggs, late of said State of Rhode Island, deceased, and respectfully represents:

1. That in the above entitled case, which is a consolidation of two causes, the first being an appeal to the Superior Court of the State of North Carolina by your petitioner from an inheritance tax assessment and levy made by the Commissioner of Revenue of said State of North Carolina, and the second an action at law to recover certain inheritance taxes paid by the executor under protest wherein your petitioner is plaintiff, in which consolidated case a final judgment against the plaintiff was entered during the March term A. D. 1923, by the Superior Court for the County of Wake, in said State, which is the highest court of the State of North Carolina in which [fol. 2] a judgment in this case may be entered according to law, and the court of record wherein the papers in said case are permanently filed and the court in which the full and final record of all proceedings is made.

2. That thereafter an appeal from said final judgment was taken to the Supreme Court of the State of North Carolina, the highest judicial tribunal of said State, which court on February 27th A. D. 1924, handed down a decision and opinion affirming said judgment.

3. That said final judgment involved and was based upon the statute of North Carolina, to-wit, Section 6 of Chapter 90 of the Public Laws of North Carolina, 1919, and particularly upon subsection 7 of said Section and Chapter.

4. That as appears in the record and proceeding in said case the validity of said statute was drawn in question on the ground of its repugnance to the Constitution of the United States and particularly its repugnance to the provisions of Section 1 of Article 14 of the amendments to the Constitution of the United States, and that the decision of said Supreme Court of the State of North Carolina was in favor of the validity of said statute.

5. That as appears of record the petitioner set up and claimed during the trial of said case certain right, title, privilege and immunity under the Constitution of the United States and particularly under the provisions of Section 1 of Article 14 of the amendments [fol. 3] to the Constitution of the United States, and that the decision of said Supreme Court of the State of North Carolina is against such title, right, privilege and immunity as set up and claimed.

6. That the Federal questions raised and the errors complained of fully appear in the records and proceedings of the case and are specifically set forth in the assignment of errors filed herewith.

Wherefore, your petitioners pray that a writ of error from the Supreme Court of the United States may issue in this case to the Supreme Court of the State of North Carolina for the correction of the errors so complained of, and that a transcript of the law and proceedings and papers in this cause duly authenticated by the Clerk of the Supreme Court of the State of North Carolina may be sent to the Supreme Court of the United States as provided by law.

Dated at Providence, in said State of Rhode Island, this 17th day of May A. D. 1924.

Rhode Island Hospital Trust Company, Executor of George Briggs, Deceased, By Its Attorneys, William R. Tillinghast, James C. Collins, Harold B. Tanner, of the Firm of Tillinghast & Collins, 1030 Hospital Trust Bldg., Providence, R. I. Of Counsel, Colin MacR. Makepeace.

[fol. 4] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the plaintiff, Rhode Island Hospital Trust Company, Executor of George Briggs, deceased, and says that there are errors in the records, proceedings and final judgment in the above case, and files the following assignment of errors upon which it will rely upon the prosecution of its writ of error to review the decision of the court of last resort in the State of North Carolina, namely, the Supreme Court of the State of North Carolina, and the final judgment for the defendant and against the plaintiff entered by the Superior Court of said State for the County of Wake, and affirmed by said decision, and for assignment of error says:

1. That the Supreme Court of the State of North Carolina erred in deciding that subsection 7 of Section 6 of Chapter 90 of the Public Laws of 1919 of the State of North Carolina, (now Section 7776 of the Consolidated Statutes of North Carolina, 1919), does not deprive the plaintiff, Rhode Island Hospital Trust Company,

[fol. 5] Executor as aforesaid, of property without due process of law in violation of Section 1 of Article 14 of the Amendments to the Constitution of the United States.

2. That the Supreme Court of the State of North Carolina erred in deciding that Section 6 of Chapter 90 of the Public Laws, of 1919 of said State, (now Section 7772ff of the Consolidated Statutes of North Carolina, 1919) in so far as it attempts to impose an inheritance tax on the transfer of stock of a foreign corporation belonging to a non-resident decedent is valid and does not deprive the Rhode Island Hospital Company, executor as aforesaid, of property without due process of law in violation of Section 1 of Article 14 of the Amendments to the Constitution of the United States.

3. That the final judgment in the case affirmed by the decision of the Supreme Court of the State of North Carolina is in violation of Section 1 of Article 14 of the Amendments to the Constitution of the United States, in that said decision and final judgment deprive the plaintiff of property without due process of law.

4. That the final judgment in the case affirmed by the decision of the Supreme Court of North Carolina, and said decision, are repugnant to the provisions of Section 1 of Article 14 of the Amendments to the Constitution of the United States in that the enforcement of [fol. 6] said judgment will deprive the plaintiff of property without due process of law.

5. That the Supreme Court of the State of North Carolina erred in sustaining the judgment of non-suit of the Superior Court of the State of North Carolina in said cause in that said judgment deprives the plaintiff of property without due process of law, contrary to the provisions of Section 1 of Article 14 of the Amendments to the Constitution of the United States.

By reason whereof the plaintiff has petitioned for a writ or error and as plaintiff in error prays that the final judgment entered by virtue of the decision of the highest court of the State of North Carolina in which a decision in the suit could be had, be reversed, and a judgment rendered in favor of the plaintiff in the full amount of its claim and for costs.

By Its Attorneys, William R. Tillinghast, James C. Collins, Harold B. Tanner, of the firm of Tillinghast & Collins, 1030 Hospital Trust Bldg., Providence, R. I. Of Counsel, Colin MacR. Makepeace.

[fol. 7] IN SUPREME COURT OF NORTH CAROLINA

WRIT OF ERROR

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of North Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of North Carolina, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Rhode Island Hospital Trust Company, Executor of George Briggs, deceased, and Rufus A. Doughton, Commissioner of Revenue of the State of North Carolina, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws [fol. 8] of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 24th day of May, in the year of our Lord one thousand nine hundred and twenty-four.

S. A. Ashe, Clerk of the District Court of the United States for the Eastern District of North Carolina.

Allowed by W. A. Hoke, Associate Justice of the Supreme Court of North Carolina, now presiding over said Court. W. A. Hoke, Associate Justice.

[fols. 9 & 10] BOND ON WRIT OF ERROR FOR \$500—Approved; omitted in printing

[fol. 11] CITATION—In usual form showing service on Rufus A. Daughton; omitted in printing

[fol. 12] IN SUPREME COURT OF WAKE COUNTY

Before Cranmer, J. Plaintiff Appealed

Be it remember that on the 8th day of June, 1922, the Rhode Island Hospital Trust Company, executor of the Estate of George Briggs, deceased, caused to be filed and docketed in the office of the Clerk of the Superior Court of Wake County an appeal from the Corporation Commission of the State of North Carolina as follows:

"North Carolina State Tax Commission, Raleigh

RHODE ISLAND HOSPITAL TRUST COMPANY, Executor of George Briggs, Deceased,

v.

R. A. DOUGHTON, Commissioner of Revenue of the State of North Carolina

In re Assessment Briggs Estate

CAPTION

In re Estate of George Briggs, Late of Providence, Rhode Island

Transfer Inheritance Tax—Nonresident Decedents

AFFIDAVIT OF EXECUTOR

Herewith is form of affidavit for information required by the State Tax Commission with reference to the estate of a non-resident decedent. This affidavit and form should be absolutely complete in detail before being sent to the Commission. In order to secure prompt attention, comply strictly with the requirements indicated in this affidavit and form.

Read Carefully the following instructions:

Refer to all estates by name at the head of every communication sent to the Commission.

Send Certificate of Qualification of Executor, or certificate of ap-
[fol. 13] pointment of administrator, or a duly certified copy instead;

If an executor makes this affidavit, strike out the word "Administrator" wherever it appears herein, and if an administrator, strike out the word "Executor" wherever it appears. An administrator with will annexed will attach certified copy of will and indicate that he is "Administrator C. T. A."

Those papers that are required to be certified must be certified by the public official under whose jurisdiction the estate is, such as probate judge, clerk of Court, surrogate, or other official performing similar duties.

It is absolutely necessary that there be set out in detail the relationship of beneficiaries to decedent, the interest of such beneficiaries, and whether or not they survived the decedent. The age at the time of death of decedent of beneficiaries who are life tenants or annuitants must be given.

Notaries public must affix seal to affidavit and state date of expiration of commission.

In the event that any tax is ascertained to be due, this must be paid before waiver is issued for the transfer of stock or other property in North Carolina.

Affidavit of Executor

Gilbert A. Harrington, as he is Tr. Officer of the R. I. Hospital Tr. Co., Executor of the estate of the above named decedent, being duly sworn, deposes and says:

1. Decedent died testate October 29th, 1919.
2. Address of executor is 15 Westminster Street, Providence, R. I.
3. Attorney- for estate is Tillinghast & Collins, and its address is 15 Westminster St., Providence, R. I.
4. Total value of realty, less mortgages (Schedule A) is: \$22,860.00.
5. Total value of personalty, (Schedule B), is, \$787,336.08.
6. Total value of estate, wherever situate, \$810,196.08.
7. Total amount of debts (exclusive of mortgages on realty, shown on Schedule C, is \$11,986.67.
- [fol. 14] 8. Net value of estate is \$798,209.41.

9. That decedent at time of death owned property within, or subject to the jurisdiction of, the State of North Carolina, as follows:

Realty, less mortgages (Schedule D), None.

Personalty (Schedule E), \$114,100.00.

Total value of realty and personalty of estate subject to the jurisdiction of the State of North Carolina (Schedules D and E), \$114,100.00.

10. Names and ages of beneficiaries, relationship to the deceased, interest of beneficiaries, exemptions claimed, are as follows:

Names: George Briggs, Jr.

Relationship: Son.

Survived decedent, yes or no: Yes.

Age of Life tenants or annuitants at death of decedent:—.

Interest of beneficiary in estate	Amount of exemption and in what State claimed
Specific Stock	\$41,000.00
Chattels	6,161.00
R. I. Realty	22,860.00

Trust of Residue

Mary Ella Briggs. Wife. Yes. 63 years. George Briggs, Jr. Son. Yes. 34 years.

Wife: Annuity of \$1,200.00 until remarriage.

Son: As to balance of residue, income of $\frac{1}{2}$ until 35 years; then income of $\frac{3}{4}$ until 40 years (remainder to accumulate) then total income for life.

The will does not expressly provide for the distribution of the property on the death of George Briggs, Jr., leaving children surviving him, and this is the most likely contingency considering the ages of the parties and the fact that he has the following children:

Jacqueline Virginia Briggs, age 10 years;

George Duncan Briggs, age 8 years;

Phillip Briggs, age 5 years;

Doris Emily Briggs, age 2 years.

[fol. 15] Very possibly the will would be construed to mean that the children should share the property equally; if not, the trust would fail and the remainder after the life estate of George Briggs, Jr., would pass by intestacy, and is now vested one-half in Mary Ella Briggs, and one-half in George Briggs, Jr.

The following other possibilities are provided for in the will.

1. If George Briggs, Jr., dies leaving neither wife nor children: Charles Briggs, or issue, brother, (predeceased); Ella F. B. Young, or issue, sister (predeceased testator); Emily M. Malone, or issue, sister: Equal shares of income, and, after death of Mary Ella Briggs, of principal of residuary trust.

2. If George Briggs, Jr., dies before his mother, leaving a child or wife and children: Until he would have been 40 years of age, they take the same proportion of the income of the trust that he would have taken, and after that, the entire income for the life of Doris Briggs, age 35 years; on her death the property being divided among the testator's then next of kin.

3. If George Briggs, Jr., dies leaving a wife, but no children: Doris Briggs, son's wife, yes, 35 years: Life interest in $\frac{1}{2}$ of income.

Charles Briggs, or issue, brother, (predeceased testator); Ella F. B. Young, or issue; sister (predeceased testator); Emily M. Malone, or issue, sister: Equal shares of balance of income, and, after death of Mary Ella Briggs and Doris Briggs, of the principal.

[fol. 16] 12. That the following schedules are full, true and correct statements of all property belonging to decedent at time of death, of all claims and debts against decedent, and expenses in connection with the settlement of the estate:

Schedule A

Realty, Wherever Situate, and Statement of Liens and Encumbrances upon Each Parcel at Death of Decedent

Description	Assessed value for year of decedent's death	Estimated market value	Amount of lien or encumbrance
Land and buildings in Providence, Rhode Island	\$22,860.00	\$22,860.00	.....
Total	22,860.00	22,860.00	.....

Schedule "F"

Stocks	Shares	At	
410 J. Briggs & Co.....	100		\$41,000
1,200 The Pullman Co.....	126		151,200
200 C. M. & St. P. R. R. Co. Com.....	42½		8,500
300 " " " " " " Pfd.....	63		18,900
500 C. & N. W. R. R. Co. Com.....	91½		45,750
500 Great Northern R. R. Co. Pfd....	85		42,500
200 Northern Pac. R. R. Co.....	85¾		17,150
500 Amer. Tel. & Tel. Co.....	99		49,500
300 Amer. Express Co.....	85		23,500
100 Wells Fargo Express Co.....	58		5,800
150 American Caramel Co. Pfd.....	85		12,750
120 Phenix Nat. Bank, Providence....	107		12,600
200 American Tobacco Co. Pfd.....	98		19,600
100 Liggett & Myers Tob. Co. Com....	225		22,500
200 " " " " " " Pfd.....	110½		22,100
160 P. Lorillard Co., Com.....	220		35,200
200 " " " " " " Pfd.....	110		22,000
100 R. J. Reynolds Tob. Co. Com.....	525		52,500
100 " " " " " " Pfd.....	111		11,100
100 American Snuff Co. Pfd.....	80		8,000
100 " " " " " " Com.....	120		12,000
270 Imp. Tob. Co. of England.....	12		3,240

[fol. 17]

100 R. J. Reynolds Tob. Co. Com. "B"	505	\$50,500
400 Temporary Certificates for shs. A. T. Securities Corporation.....	76	30,400

Dividend scrip:

R. J. Reynolds Tobacco Co.:

No. 13 for Dividend #77	\$500
No. 53 for Dividend #78	450
No. 53 for Dividend #79	600

1,550 @ .. 99

1,534.50

American Tobacco Co.:

No. A362, Series A, Due	
Mar. 1, 1921.....	\$500
No. 369, Series B, due	
Mar. 1, 1921.....	500
No. C380, Series C, due	
Mar. 1, 1921.....	500
No. 380, Series D, due	
Mar. 1, 1921.....	500
No. 393, Series E, due	
Mar. 1, 1921.....	500
No. 397, Series F, due	
Mar. 1, 1921.....	500

\$3,000 @ .. 185

5,550

\$727,614.50

Schedule "B"

Personalty, Wherever Situate

Cash in hand.....	\$360
Cash on deposit, as follows: Call account, R. I. Hospital Tr. Co.....	10,157.98

\$10,517.98

Promissory notes, bonds and mortgages:

Corporate Stocks and bonds:	Par value	Market value
— — — — —	\$.....	\$.....
— — — — —
See Schedule "F".....	727,614.50

United States and State bonds, accrued interest to be included:

\$10,000 U. S. First Liberty Loan	
Conv. 4¼%	9,510.00
\$10,000 U. S. Second Liberty	
Loan Conv. 4¼%	9,322.00
[fol. 18]	
\$10,000 U. S. Fourth Liberty	
Loan Con. 4¼%	\$9,330.00
\$10,000 U. S. Victory Loan 4¾%	9,954.00

\$38,116.00

Diamonds, jewelry	200.00
Due from estate of Chas. Briggs.....	200.00
Insurance payable to estate of decedent: Accrued interest and dividends.....	1,853.60
Value of all other personalty of any kind or nature	8,834.00
Total value of all personalty.....	\$787,336.08

Schedule "C"

Debts and Claims Against Estate Other Than Mortgages on Realty

(If any claims are secured by collateral, state what property has been pledged.)

Debt or claim of	Nature of	When due	Amount
Calef Bros.	Supplies.....	.....	\$78.40
Blanding & Blanding ...	Druggists.....	.....	7.13
Providence Tel. Co.....	Service.....	.....	11.31
Providence Gas Co.....	Supplies.....	.....	9.33
Callender, McAsland & Troup Company	Merchandise ..	.....	32.53
Ochee Spring Water Co..	Supplies.....	.....	1.65
Narragansett Elec. Co..	Supplies.....	.....	.90
Tilden-Thurber Corp....	.....	.....	6.00
A. S. Doane.....	.....	.....	1.88
George Ellis & Co.....	.....	.....	1.13
Belcher & Loomis Hdw. Co.	Supplies.....	.....	1.00
Geo. L. Clafin Co.....	Druggists.....	.....	110.00
Bricken Elieson .....	.....	.....	48.00
Mary E. Forrest.....	.....	.....	90.00
Wayland Pharmacy	Supplies.....	.....	12.67
Providence Ice Co.....	Supplies.....	.....	11.79
Fairoaks Farm	Supplies.....	.....	29.36
Gertrude W. Barney....	.....	.....	36.80
S. Newell Smith, Jr., M. D.	Services.....	.....	144.00
Dexter Asylum .....	.....	.....	6.00
Louttit Laundry Co.....	Service.....	.....	7.13
J. Briggs & Sons Co.....	.....	.....	527.95
W. A. Huse & Son.....	.....	.....	26.16
Funeral expenses .....	.....	.....	541.50
[fol. 19] Administration expenses (estimated).....	.....	.....	243.14
Attorneys' fees, court charges, etc., say.....	.....	.....	2,000.00
Executors, administrator's commissions, say.....	.....	.....	8,000.00
Total .....	.....	.....	\$11,986.67

Schedule "D"

Realty of Decedent in State of North Carolina

Description: —.

Assessed value for year of decedent's death: —.

Estimated market value: —.

Amount of Lien or encumbrance: —.

Value of Equity: —.

Schedule "E"

Personalty of Decedent Within or Subject to Jurisdiction of State of North Carolina

Cash on Deposit in: None.

Promissory notes, bonds and mortgages in State of North Carolina at time of death: None.

Corporate stocks and bonds within or subject to jurisdiction of State of North Carolina: —.

Stock Belonging to Estate of George Briggs as of October 29th, 1919

	Par value	Market value
100 shs. R. J. Reynolds Tob. Co. Pfd..	100	\$11,100
100 shs. R. J. Reynolds Tob. Co. Com..	100	52,500
100 shs. R. J. Reynolds Tob. Co. Com..	100	50,500
Total		\$114,100.00

On August 20, 1920, the 100 shares of common stock par \$100.00 was exchanged for 400 shares common stock, par \$25; the 100 shares common "B" stock, par \$100, was exchanged for 400 shares common "B" stock, par \$25. There was then paid a 200% stock dividend on both common and common "B" in the common "B" stock, giving a total stock dividend of 1,600 shares common "B." The executor therefore asks waivers on the following property:

100 shares R. J. Reynolds Tobacco Co. \$100 pfd.

400 shares R. J. Reynolds Tobacco Co. 25 com.

2,000 shares R. J. Reynolds Tobacco Co. 25 com. "B."

Total, \$—.

[fol. 20] 13. That decedent owned no stock or bonds in corporations held in the name of some other person, except such stocks and bonds as are included in Schedule "E" above.

14. That decedent, so far as affiant has knowledge, information or belief, has made no transfer or gift of realty or personalty subject to the jurisdiction of the State of North Carolina, within five years

prior to decedent's death, without full and adequate consideration, to relatives or others, except as follows:—None.

(Signed) Gilbert A. Harrington, Tr. Officer of Rhode Island Hosp. Trust Co., Executor.

Sworn to and subscribed before me this 5th day of April, 1922.

(Signed) John A. Anderson, Notary Public, State of Rhode Island.

IN SUPERIOR COURT OF WAKE COUNTY

RETURN OF COMMISSIONER TO NOTICE OF APPEAL

A. D. Watts, Commissioner of Revenue of the State of North Carolina, hereby makes the following return to the notice of appeal attached hereto;

The North Carolina assets of the estate of George Briggs consisted of investment in the R. J. Reynolds Tobacco Company as follows:

Stocks	\$114,100.00
Dividend scrip . . .	1,534.50

\$115,635.50 @ 66-2/3% = \$77,089.67.

Upon this \$77,089.67 an inheritance tax and interest in the sum of \$2,658.85 was assessed and collected.

This assessment was made under authority of subsection Seventh, Section 6, Chapter 90, Public Laws of 1919, which reads as follows:

"The words 'such property or any part thereof or interest therein within this State' shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other State or country, when such incorporated company is the owner of property [fol. 21] in this state, and if 50 per cent or more of its property is located in this State, and when bonds or shares of stock in any such Company not incorporated in this State, and owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such Company."

In the year 1919 the R. J. Reynolds Tobacco Co. reported 66-2/3 of its property invested in the State of North Carolina.

This the 7th day of June, 1922.

A. D. Watts, Commissioner of Revenue.

IN SUPERIOR COURT OF WAKE COUNTY

NOTICE OF APPEAL—May 31, 1922

Hon. A. D. Watts, Commissioner of Revenue, Raleigh, N. C.

DEAR SIR: The Rhode Island Hospital Trust Company of Providence, Rhode Island, as executor under the will of George Briggs, late of the State of Rhode Island, deceased, herewith pays to you under protest the sum of \$2,658.85, this sum being demanded by you as the transfer inheritance tax on the transfer of certain shares of stock and scrip of the R. J. Reynolds Tobacco Company, a New Jersey corporation, which shares and scrip belonged to George Briggs at the time of his death.

The said Rhode Island Hospital Trust Company, as executors, hereby pleads and alleges:

1. That the statute under which the tax is assessed is unconstitutional in that it provides for an inheritance tax on the transfer of the stock of a corporation not incorporated under the laws of North Carolina and owned by a non-resident decedent at the time of his death:

2. That in assessing said tax, dividend scrip of the face value of \$1550.00 has been included as taxable, whereas the law under which this tax is assessed does not apply to dividend scrip.

The said Rhode Island Hospital Trust Company, as Executor [fol. 22] hereby gives notice of an appeal from your decision to the Superior Court. This notice of an appeal is hereby given to you in conformity with the provisions of Section 15, Chapter 34, Laws of 1921. We will be pleased if you will accept service of this notice.

This the 31st day of May, 1922.

Rhode Island Hospital Trust Co., Executor of George Briggs.
Deceased, by Pou, Bailey & Pou, Its Attorneys.

I hereby accept service of the above notice of an appeal to the Superior Court by the Rhode Island Hospital Trust Company, as executor of George Briggs, deceased.

This the 31st day of May, 1922.

A. D. Watts, Commissioner of Revenue.

IN SUPERIOR COURT OF WAKE COUNTY

OUTLINE OF DEFENSES AND ASSIGNMENT OF ERRORS

Rhode Island Hospital Trust Company, executor of the last will and testament of George Briggs, appeals to the Superior Court of Wake County from the order, ruling and decision of the Commissioner of Revenue rendered in the matter of the claim of the State of

North Carolina for inheritance tax upon certain shares of capital stock of R. J. Reynolds Tobacco Company belonging to the estate of George Briggs.

1. And in connection with the said appeal, said appellant alleges and says that said order, ruling and decision of the Commissioner of Revenue were contrary to law, and that the statute or North Carolina under which the Commissioner of Revenue claims the right to assess the tax from appellant is in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that if the said law should be enforced it would result in depriving appellant of property without compensation and without due process of law, and would be a denial to appellant of equal protection of law. The appellant hereby expressly pleads the said 1st section of the Fourteenth [fol. 23] Amendment to the Constitution of the United States as a defense to the claim of the Commissioner of Revenue and to the State of North Carolina for the payment of the tax by appellant upon the said shares of capital stock in the said R. J. Reynolds Tobacco Company; and the appellant does rely upon the said 1st section of the Fourteenth Amendment to the Constitution of the United States as a protection against and a defense to any claim of the Commissioner of Revenue or the State of North Carolina for the tax to be paid upon or out of the shares of capital stock of R. J. Reynolds Tobacco Company owned by the estate of the late George Briggs.

2. Appellant further sayeth that the said George Briggs never was a citizen or resident of the State of North Carolina and was never subject to taxation under and by virtue of the laws of the said State of North Carolina; that he resided for many years in the State of Rhode Island, and was, at the time of his death, a citizen and resident of the said State of Rhode Island, and was domiciled therein; that he executed a last will and testament which was admitted to probate in the said State of Rhode Island, and that appellant, Rhode Island Hospital Trust Company, has duly qualified as his executor, and is now engaged in the execution of the trust and administration of his estate. That among the personal property belonging to the said George Briggs were certain shares of the capital stock of R. J. Reynolds Tobacco Co.; that R. J. Reynolds Tobacco Company is a corporation duly chartered and organized under the laws of the State of New Jersey; that under and by virtue of decisions of the Supreme Court of the United States, said R. J. Reynolds Tobacco Company is a citizen, resident and inhabitant of the State of New Jersey, and of no other State.

3. Appellant avers and alleges that the State of North Carolina is without power to impose a tax upon the shares of stock of a New Jersey corporation owned by a citizen of Rhode Island, and any act of the General Assembly of North Carolina which undertakes to im-[fol. 24] pose a tax upon the shares of stock of a New Jersey corporation belonging to a citizen of the State of Rhode Island is migratory and void because the enforcement of such a law would be taking of property of a citizen of Rhode Island without authority of law, without compensation, and without due process of law, and in clear vio-

lation of section 1 of the Fourteenth Amendment to the Constitution of the United States, which appellant again sets up and relies upon as a defense against any claim of the State of North Carolina or of the Commissioner of Revenue for the payment of any taxes under and by virtue of the aforesaid unconstitutional act of the General Assembly of North Carolina. The appellant respectfully prays that the said order, ruling and decision of the Commissioner of Revenue be set aside and declared to be of no effect.

4. Appellant further sayeth that under the aforesaid act of the General Assembly of North Carolina that before it was allowed to perfect this appeal it was required to pay to the Commissioner of Revenue, and did pay to him, the sum of \$2,658.85, the amount of tax claimed by the Commissioner of Revenue upon the said shares of the capital stock of the said R. J. Reynolds Tobacco Company, owned by the estate of George Briggs, but it paid the said amount of money under protest and now demands that the said \$2,658.85, which it was wrongfully and unlawfully required to pay, be returned to it, with interest on the said amount from the date of payment, to-wit, the 31st day of May, 1922.

Respectfully submitted, Rhode Island Hospital Trust Co.,
by Its Attorneys, Pou, Bailey & Pou.

Certified to by A. D. Watts, Commr. of Rev., 8 June, 1922.

IN SUPERIOR COURT OF WAKE COUNTY

STATEMENT RE SUMMONS

And, thereafter, on July 31, 1922, the plaintiff, Rhode Island Trust Company, executor of George Briggs, deceased, sued and prosecuted out of the office of the Clerk of the Superior Court of Wake County, N. C., a summons in words and figures as follows: (Summons, dated 31 July, 1922, and showing service 1 Aug. 1922, filed in original transcript.)

[fol. 25] IN SUPERIOR COURT OF WAKE COUNTY

COMPLAINT

Plaintiff, complaining of defendant, alleges and says:

1. That it is a corporation organized under the laws of the State of Rhode Island, and that it is engaged in doing a trust business, but not doing business in North Carolina.

2. That defendant is Commissioner of Revenue of the State of North Carolina, and that as such he is charged with the collection

of all inheritance taxes due the State of North Carolina; and that he is charged with the collection of inheritance tax upon the transfer of stock owned by non-residents in North Carolina corporations, and in foreign corporations owning property in North Carolina.

3. That George Briggs, deceased, for many years lived in the State of Rhode Island, and that he was a resident, citizen and inhabitant of Rhode Island, and of no other state, at the time of his death on October 29th, 1919, That George Briggs, deceased, has never been a citizen of the State of North Carolina.

4. That plaintiff, Rhode Island Hospital Trust Company, was appointed Executor under the last will and testament of George Briggs on November 25, 1919, by the Municipal Court of the City of Providence, Rhode Island, the said court exercising local probate jurisdiction, and that plaintiff has given bond according to law and has entered upon the discharge of his duties as such executor.

5. That George Briggs, deceased, died owning certain shares of stock in R. J. Reynolds Tobacco Company, to-wit:

- 100 shares of common stock.
- 100 shares of class "B" stock.
- 100 shares of common stock

6. That R. J. Reynolds Tobacco Company is a corporation organized under the laws of the State of New Jersey and of no other state.

7. That in performance of its duty as Executor under the last will and testament of George Briggs, deceased, plaintiff requested that the stock standing in the name of George Briggs, deceased, be transferred to it, but plaintiff was informed by R. J. Reynolds Tobacco Company that this could not be done until an inheritance tax due the State of North Carolina was paid or waived by the Department of Revenue of the State of North Carolina.

8. That plaintiff requested the Department of Revenue to waive this tax in order that the said stock certificates could be transferred, and the said estate of George Briggs, deceased, be settled. That the request for a waiver of the said inheritance tax was denied, and the plaintiff was informed that the said inheritance—amounting to \$2,658.85—had to be paid before the said certificates of stock could be transferred.

9. That in order that the said certificates of stock in R. J. Reynolds Tobacco Company could be transferred and the said estate of George Briggs be settled, plaintiff on the 31st day of May, 1922, paid to the Department of Revenue, under protest, the sum of \$2,658.85, and at that time served written notice upon the Commissioner of Revenue that the said tax was paid under protest and that a suit would be instituted against him for its recovery, and duly demanded the return of the money so paid.

10. The law under which the tax was levied is as follows:

"All bonds and shares of stock or interest therein held by a non-resident of this State in any company incorporated under the laws of some other state or government, which company owns property in this state to the amount of 50 per cent. or more of its total property, shall be subject to the tax imposed under section six hereof, computed upon a valuation which shall be limited to that part of the total valuation thereof which the property owned in this State bears to the total property of such company:" and

"Any incorporated company incorporated in this state and owning property in this State which shall transfer on its books the bonds or shares of stock of any decedent holder of shares of stock in such company exceeding in par value \$500.00, before the inheritance tax, if any, has been paid, shall become liable for the payment of the [fol. 27] said tax, and any property held by such company in this state shall be subject to execution to satisfy same. A receipt or waiver signed by the Commissioner of Revenue of North Carolina shall be full protection for any such company in the transfer of any such stock or bonds." Laws of 1919, Chapter 90, Section 6, sub-section 7; and

Under section 6 of Chapter 90, laws of 1919, sub-section 1, which provides for the computation of said tax.

11. That the tax levied upon and collected under compulsion by defendant from plaintiff upon the transfer of stock owned by plaintiff's testator in a foreign corporation was illegal and wrongful and was a violation of the rights of plaintiff guaranteed to it by the 1st section of the Fourteenth Amendment to the Constitution of the United States. That the enforced collection of said tax was the taking of plaintiff's property by defendant, representing the State of North Carolina, without compensation and without due process of law, and was a denial to plaintiff of the equal protection of the law, all in violation of said section 1 of the Fourteenth Amendment to the Constitution of the United States; the benefit and protection of which plaintiff hereby sets up, pleads and relies upon as a basis for this suit or action brought to recover the tax illegally levied and collected as aforesaid.

12. That the imposition of said tax is a violation of Section 17 of Article One of the Constitution of North Carolina, in that it is the taking of property contrary to the law of the land; the benefit and protection of which plaintiff hereby sets up, pleads and relies upon as a basis for this suit or action brought to recover the tax illegally levied and collected as aforesaid.

13. That it was necessary for plaintiff to pay the tax hereinbefore mentioned although the same was not authorized by law and the same was illegal and void because it was its duty to have the said shares of stock belonging to the estate of George Briggs transferred to it in order that it might carry out the trusts imposed upon it by [fol. 28] the will of the said George Briggs; and the R. J. Reynolds tobacco Company would not make the transfer unless the State of

North Carolina waived the said tax, or unless the said tax was paid, although it might believe that the tax attempted to be collected was illegal and void. Under these circumstances it was necessary for plaintiff to pay the tax under compulsion and duress, protesting the illegality of the same and preserving the right under law to bring suit and recover the same.

14. That this suit is brought under the provisions of section 7979 of the Consolidated Statutes of North Carolina which permits suits to be instituted against any sheriff for the recovery of taxes, collected illegally or without authority, within ninety days after payment; and under section 7974 of the Consolidated Statutes, which, in explaining the meaning of various terms, states: "* * * 4. 'Sheriff.' Every person who is by law authorized to collect taxes, either state or municipal."

Wherefore, plaintiff demands judgment against defendant:

1. For the amount of \$2,658.85, together with interest on said amount at the rate of 6 per centum per annum from May 31st, 1922, until paid;

2. For the costs of this action to be taxed by the Clerk of this Court;

3. For such other and further relief as to the Court may seem just.

Pou, Bailey & Pou, Attorney- for Plaintiff.

Verified by Vice-Pres. of Plaintiff.

IN SUPERIOR COURT OF WAKE COUNTY

ANSWER

The defendant, A. D. Watts, Commissioner of Revenue of the State of North Carolina, answering, says that

1. The allegations contained in articles 1, 2, 3, 4 and 5 of the complaint are true.

2. The allegations contained in article 6 of the complaint are true, with this modification: The R. J. Reynolds Tobacco Company, [fol. 29] while a New Jersey corporation, is domesticated in North Carolina, and has two-thirds of the total value of the property in the latter State.

3. The allegations contained in articles 7, 8 and 9 of the complaint are true.

4. The allegations contained in article 10 of the complaint are true, with this modification: the tax in dispute was levied under the Revenue Act of 1919, now incorporated in the Consolidated Statutes

as Section 7772, et seq. Section 7772 levies as inheritance tax upon the property of a non-resident decedent within the state, and section 7776 expressly declares that shares of stock in a company such as the Reynolds Tobacco Company, though owned by non-resident decedent, shall be property within the state, and subject to the inheritance tax of the State in the proportion that its property in the state bears to its total property, if that proportion is fifty per cent or more. The remainder of article 10 sets out correctly the statute which prohibits the corporation from transferring the stock upon its books in the absence of a waiver from the Commission of Revenue, Consolidated Statutes, Section 7776, sub-section 2.

5. Answering articles 11 and 12 of the complaint, the defendant says that in levying the inheritance tax complained of in this action, he has obeyed strictly the clear and absolute command of the statute; that whether or not the statute is constitutional, he is advised and believes is a judicial question, not to be determined by him in even the first instance, his duty being to administer the laws as they are written, so he submits the question to the Court.

6. Article 13 of the complaint is admitted.

7. It is admitted that if the statute imposing the inheritance tax in this instance is unconstitutional, the plaintiff is entitled to judgment against the defendant for \$2,658.85, with interest and costs.

James S. Manning, Attorney General, Attorney for Defendant.

Verified by A. D. Watts, Comm. Rev.

[fol. 30] IN SUPERIOR COURT OF WAKE COUNTY

REPLY

Plaintiff, replying to paragraph 2 of defendant's answer, alleges and says:

1. That it is a fact that on August 14th, 1906, the R. J. Reynolds Tobacco Company filed with the Secretary of State a certified copy of its charter and a statement of its capital stock authorized, the amount actually issued, the location of its principal office in this state, the name of its agent in charge of its office, the character of the business which it transacts, and the name and post office address of its officers and directors; and that the copies of its said charter and statement were duly certified under its corporate seal.

2. That all of these acts were required of the R. J. Reynolds Tobacco Company before it was permitted to do business in this State; that the performance of these acts did not constitute the said R. J. Reynolds Tobacco Company a North Carolina corporation, but on the contrary they were required of it because it was not a corporation of this state, but was a foreign corporation; and that it is and

remains a foreign corporation, viz; a corporation of the State of New Jersey with its stock books located in the City and State of New York, where its shares of stock are transferred by the Equitable Trust Company, its transfer agent, and what defendant calls "domestication" was only a performance of these acts which the state required to be performed by a foreign corporation before it was permitted to do business in this State.

3. Plaintiff sayeth that it was not within the power of the General Assembly to draw within the taxing power of the State the transfer by will of the shares of stock in said R. J. Reynolds Tobacco Company, a foreign corporation, owned by a person living in Rhode Island, who had never been a citizen of North Carolina, the particular certificates transferred not having been in North Carolina at the date of death of the decedent. And it says that the act of the R. J. Reynolds Tobacco Company in filing a copy of its charter and a [fol. 31] statement as aforesaid could not and did not have the effect of rendering a transfer by will of shares of its stock owned by the late George Briggs, of the State of Rhode Island, subject to the inheritance tax imposed by the State of North Carolina.

Wherefore, plaintiff reiterates and prays for the judgment and relief demanded in its complaint.

Pou, Bailey & Pou, Attorneys for Plaintiff.

Verified by Vice-Pres. of Pltff.

IN SUPERIOR COURT OF WAKE COUNTY

REJOINDER

The defendant, A. D. Watts, Commissioner of Revenue, by way of rejoinder to the reply filed herein, says:

1. That since 1887 the revenue laws of the State have identified the ownership of shares in ordinary corporations with the property itself of the corporation. For many years, and up to and through 1920, the value of the shares of these corporations was estimated by the State Tax Commission under rules and regulations provided in the statute and certified for taxation to the State Treasurer, who collected only the ad valorem tax levied for State purposes. Upon this the statute declared that the share-holder need not list nor pay taxes upon the value of his shares in his hands. The tangible and intangible property of these corporations was listed for taxation by the local assessors. Wherever the value of such corporations thus ascertained by the State Tax Commission exceeded the value of the property locally assessed, the excess was, and is, certified to the local government agencies for taxation there.

2. In the Revenue Act of 1917 this identification of the property of the shareholder with the property of the corporation itself was

carried further, and in the last clause of section 4, Chapter 231, Public Laws of 1917, it is declared as follows:

"Nor shall any individual stockholder of any foreign corporation be required to list or pay taxes on any share of its capital stock, if [fol. 32] two-thirds in value of its entire property is situated and taxed in the State of North Carolina, and the said corporation pays franchise tax on its entire issued and outstanding capital stock at the same rate as paid by domestic corporations."

3. In the Revenue Act of 1919, another clause was incorporated in said provision between the word "Carolina" and the word "and," in line 5 of the above quotation, as follows:

"Or if such corporation has tangible assets within this State assessed for taxation at a value exceeding the par value of the total stock owned by citizens of this State."

4. The defendant is advised and believes that this identification of the shares of stock in such a corporation as R. J. Reynolds Tobacco Company with the property of that corporation itself as simply representing an interest in that property, is a valid and legal and constitutional declaration on the part of the General Assembly of the State. He is, therefore, advised and believes that the shares of stock in the hands of the deceased Briggs, under the North Carolina statutes, represented an interest in the property of the corporation, R. J. Reynolds Tobacco Company, wholly located within the State of North Carolina, to the extent of two-thirds of the value of said stock, and, therefore, as the inheritance tax law taxes the transfer of said property interest in property located in North Carolina only to the extent of fifty per cent of its value, said statute is constitutional and valid, and does not offend either against the state or federal constitution.

James S. Manning, Attorney General. Frank Nash, Asst. Attorney General.

Verified by O. S. Thompson, Clerk.

IN SUPERIOR COURT OF WAKE COUNTY

ORDER CONSOLIDATING COSTS AND SUBSTITUTING DEFENDANT

Upon the motion of Pou, Bailey and Pou, Attorneys for plaintiff, and with the consent and approval of Frank Nash, attorney for defendant, it is ordered and decreed by the Court:

1. That the plaintiff's appeal from the levy and collection of the inheritance tax against the estate of George Briggs, deceased, by defendant, together with the above entitled suit by plaintiff to recover from defendant the amount of the inheritance tax so assessed and paid by plaintiff under protest be and are hereby consolidated into one action, to be heard and disposed as one consolidated action.

2. It appearing to the Court that defendant, A. D. Watts, has resigned his office as Commissioner of Revenue, and that R. A. Doughton has been appointed his successor in office, and that the said R. A. Doughton has duly accepted, qualified, and entered in the discharge of his duties as Commissioner of Revenue, it is ordered by the Court that R. A. Doughton be substituted as defendant in this action in lieu of A. D. Watts, resigned.

This March 24th, 1923.

E. H. Cranmer, Judge Presiding. Frank Nash, Asst. Atty. General.

We consent: Pou, Bailey & Pou, Attys. for Plff.

IN SUPERIOR COURT OF WAKE COUNTY

Agreed Statement of Facts

George Briggs was a resident of the State of Rhode Island, and domiciled therein at the time of his death. He never resided in North Carolina. He died testate October 29th, 1919, leaving a large estate. The plaintiff, the Rhode Island Hospital Trust Company, was appointed executor of the last will and testament of said Briggs, and duly qualified as such before the Municipal Court of the City of Providence, Rhode Island, on the 25th day of November, 1919.

Among other property devised or bequeathed in the will was stock in the R. J. Reynolds Tobacco Company, valued at the time of his death at \$114,100.00, and dividends earned in the same company, represented by dividend scrip issued to him, to the amount of \$1,534.50 value at the time of the testator's death. These two sums represented a total value of \$115,634.50. The R. J. Reynolds Tobacco Company (hereinafter for brevity called the [fol. 34] Tobacco Company) is a corporation created under the laws of the State of New Jersey, and is now, and has at all times named been, a corporation of the State of New Jersey, but, desiring to do business in North Carolina, made application to the Secretary of State for permission to do business in this State in the manner provided in Section 1194 of the Revisal, now Section 1181 of the Consolidated Statutes. For the purpose of obtaining permission to do business in this State, the Tobacco Company, on or about the 14th day of August, 1906, filed with the Secretary of State its application for such license in due form, which said application was upon the blank form substantially as follows:

"APPLICATION FOR DOMESTICATION BY A FOREIGN CORPORATION

The ——— Company, organized under the laws of the State of ———, does hereby make the following statement, in compliance with the provisions of Section 1181 of the Consolidated Statutes of North Carolina.

First. The name of the Corporation is ———.

Second. The location of the registered office is at No. ——— Street, and the location of the principal office in North Carolina is at ———, N. C., County of ———, and ——— is the agent upon whom process may be served.

Third. The character of the business is ———.

Fourth. The amount of the authorized capital stock is \$——. The amount actually issued and outstanding is \$——.

Fifth. The names and addresses of all the directors and officers are as follows:

Names of directors		Address		Date of election or appointment		Term of office
*	*	*	*	*	*	*
Officers:						
President:	———
Vice-Pres.:	———
Treas.:	———
Secretary:	———
2d Vice-Pres.:	———

[fol. 35] Sixth. The copy herewith attached is a true and correct copy of the charter or articles of agreement and all amendments.

Witness our hands the — day of ———, A. D. 192——.

———, Pres. ———, Sec. (Corporate Seal.)

SECTION 1181 OF THE CONSOLIDATED STATUTES

"Every foreign corporation, before being permitted to do business in this State, insurance companies excepted, shall file in the office of the Secretary of State a copy of its charter or articles of agreement, attested by its President and Secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized, the amount actually issued, the principal office in this State, the name of the agent in charge of such office; the character of the business which it transacts, and the names and postoffice addresses of its officers and directors. And such corporation shall pay to the Secretary of State, for the use of the State, twenty cents for every one thousand dollars of the total amount of the capital stock authorized to be issued by such corporation, but in no case less than \$25.00 nor more than \$250.00, and also a filing fee of \$5.00. Such corporation may withdraw from the State upon filing in the office of the Secretary of State a statement signed by its president and secretary and attested by its corporate seal, setting forth the fact that such corporation desires to withdraw, and upon

payment to the Secretary of State of a fee of \$5.00. Every corporation failing to comply with the provisions of this section shall forfeit to the State \$500.00, to be recovered with costs in an action to be prosecuted by the Attorney General, who shall prosecute such actions whenever it shall appear that this section has been violated."

And with the said application, said R. J. Reynolds Tobacco Company filed with the Secretary of State a duly authenticated copy of its charter as follows:

[fol. 36] CERTIFICATE OF ORGANIZATION OF R. J. REYNOLDS TOBACCO COMPANY

This is to certify that we, R. J. Reynolds, W. N. Reynolds, J. B. Duke, J. B. Cobb, Geo. M. Gales, C. K. Faucette and D. A. Keller, do hereby associate ourselves into a corporation under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act Concerning Corporations, Revision of 1896," and the several supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, and to that end we do by this, our Certificate, set forth:

First. That the name which we have assumed to designate such corporation, and to be used in its business and dealings, is "R. J. Reynolds Tobacco Company."

Second. The location and principal office of such corporation in the State of New Jersey is at No. 765 Broad Street, in the City of Newark, in the County of Essex. The name of the agent therein, and in charge thereof, upon whom processes against such corporation may be served, is J. Bayard Kirkpatrick.

Third. The objects for which this corporation is formed are to cure leaf tobacco and to buy, manufacture and sell tobacco in any and all its forms, and to erect or otherwise acquire, factories and buildings, establish, maintain and operate factories, warehouses, agencies and depots for the storing, preparation, cure and manufacture of its tobacco, and for its sale and distribution, and to transport or cause the same to be transported, as an article of commerce, and to do any and all things incidental to the business of trading and manufacturing aforesaid.

This corporation shall also have power to conduct its business or any portion of it in all other states and territories, colonies and dependencies of the United States of America, and in Great Britain and Canada and all other foreign countries, to have one or more offices out of the State of New Jersey, and to hold, purchase, lease, mortgage and convey real and personal property out of the State of [fol. 37] New Jersey, as well as in said State.

Fourth. The total amount of the authorized capital stock of the corporation is \$5,000,000.00, divided into 50,000 shares of the par value of \$100 each.

The amount with which the corporation will commence business is \$1,500.00, which is divided into 15 shares of the par value of \$100 each.

Fifth. The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which this Company will commence business, are as follows:

Name	Post office address	Shares
R. J. Renolds.....	765 Broad St. Newark, N. J.....	2
W. N. Reynolds.....	765 Broad St. Newark, N. J.....	2
J. B. Duke.....	765 Broad St. Newark, N. J.....	3
J. B. Cobb.....	765 Broad St. Newark, N. J.....	3
Geo. M. Gales.....	765 Broad St. Newark, N. J.....	2
C. K. Faucette.....	765 Broad St. Newark, N. J.....	2
D. A. Keller.....	765 Broad St. Newark, N. J.....	1

Sixth. The Directors of the Corporation shall be classified in respect to the time for which they shall respectively hold office, and at the first election for Directors the several classes shall be elected as follows: Three shall be elected for one year; two shall be elected for two years; and two shall be elected for three years, and at the expiration of their respective terms, their successors shall be elected for three years, so that the term of each Director, after those elected at the first election, shall be three years. If the number of directors shall be at any time changed, the Board of Directors shall have power to re-arrange the classification of the terms of the Directors. Meetings of the Board of Directors need not be held in the State of New Jersey, but may be held in such place or places, in any other State or States as the By-laws of the corporation may from time to time provide. The corporation may, through its Board of Directors, acquire and undertake the whole or any part of the business, property, assets, contracts and liabilities of any person, firm or corporation, if the same are, in their judgment, useful in the business of this corporation.

The Board of Directors shall have the power, by vote of a majority of all the Directors, and without assent or vote of the stockholders, to make, alter, amend and rescind the by-laws of this corporation, to fix the amount to be reserved as working capital, and to fix what number of Directors shall constitute a quorum of the Board.

Seventh. The existence of this corporation shall commence on the date of the filing of this certificate, in the office of the Secretary of State of New Jersey, and shall continue perpetually.

In witness whereof we have hereunto set our hands and seals the third day of April, A. D. 1899.

R. J. Reynolds (Seal), W. N. Reynolds (Seal), J. B. Duke (Seal), J. B. Cobb (Seal), Geo. M. Gales (Seal), C. K. Faucette (Seal), D. A. Keller (Seal).

Signed, sealed, and delivered, in the presence of S. B. Goodale.
(10¢ I. R. Stamp. Cane.)

STATE OF NEW YORK,

City and County of New York:

Be it remembered, that on this third day of April, 1899, before me, S. B. Goodale, a Commissioner of the State of New Jersey, in New York, personally appeared R. J. Reynolds, W. N. Reynolds, J. B. Duke, J. B. Cobb, Geo. M. Gales, C. K. Faucette and D. A. Keller, known to me to be the individuals described in, and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal, this third day of April, A. D. 1899.

S. B. Goodale, Commissioner of New Jersey Resident in New York. (Seal.)

[fol. 39] (10¢ I. R. Stamp. Cane.)

(Endorsed:) "Received in the Clerk's office of the County of Essex, on the 3rd day of April, A. D. 1899, and recorded in Book 16 of Incorp. Bus. Cos. for said County, page 117, etc. William O. Kuebler, Clerk."

"Filed April 4, 1899. George Wurtz, Secretary of State."

We, the undersigned, R. J. Reynolds, President, and Geo. W. Coan, Secretary, respectively, of R. J. Reynolds Tobacco Company, do hereby certify that the foregoing is a copy of the charter or Articles of Incorporation, of R. J. Reynolds Tobacco Company.

In witness whereof, we have signed this attestation and cause to be hereto attached the seal of said R. J. Reynolds Tobacco Company, this 14th day of August, 1906.

R. J. Reynolds, Geo. W. Coan. (Corporate Seal.)

We, the undersigned, R. J. Reynolds, President, and Geo. W. Coan, Secretary, respectively, of R. J. Reynolds Tobacco Company, do hereby certify that the said R. J. Reynolds Tobacco Company has an authorized capital stock of \$5,000,000.00, increased by an amendment to its charter, on the 21st day of February, 1906, to \$10,000,000.00, divided into shares of \$100 each; that there is now issued and outstanding \$7,525,000.00 of said stock; that the principal office of said R. J. Reynolds Tobacco Company in North Carolina is Winston-Salem, North Carolina; the name of the agent in charge of such office is R. J. Reynolds; the character of the business which said corporation transacts is the manufacture, sale and distribution of tobacco and the products of tobacco in any and all its forms; that

the name and post-office address of its officers and directors are as follows:

Officers

R. J. Reynolds.....	President.....	Winston-Salem, N. C.
W. N. Reynolds.....	Vice-Pres.....	" " "
Geo. W. Coan.....	Treasurer.....	" " "

[fol. 40]

Directors

R. J. Reynolds.....	Winston-Salem, N. C.
W. R. Reynolds.....	Winston-Salem, N. C.
W. N. Reynolds.....	Winston-Salem, N. C.
Geo. W. Coan.....	Winston-Salem, N. C.
D. Rich	Winston-Salem, N. C.
R. B. Horn.....	Winston-Salem, N. C.
C. A. Hopman.....	104 1st St., Jersey City, N. J.

In witness whereof, we have hereto signed our names, and caused to be attached hereto, in attestation hereof the corporate seal of R. J. Reynolds Tobacco Company.

R. J. Reynolds, Geo. W. Coan. (Corporate Seal.)

Filed August 14th, 1906. J. Bryan Grimes, Secretary of State.

State of North Carolina. Department of State

Raleigh, March 19, 1923.

I, W. N. Everett, Secretary of State of the State of North Carolina, do hereby certify the foregoing and attached six sheets to be a true copy from the records of this office.

CERTIFICATE GRANTING AUTHORITY TO TRANSACT BUSINESS

Thereupon, Honorable J. Bryan Grimes, who was then Secretary of State, granted to said Tobacco Company authority to transact business in this State, which authority was as follows:

"I, J. Bryan Grimes, Secretary of State of the State of North Carolina, do hereby certify:

1. That the R. J. Reynolds Tobacco Company, a corporation organized under the laws of the State of New Jersey did on ———, ———, filed in my office a duly attested copy of its charter and a statement in compliance with Section 1181 of the Consolidated Statutes.

2. That said statement sets forth:

(a) That the name of the corporation is R. J. Reynolds Tobacco Company.

(b) That it is incorporated under the laws of the State of New Jersey.

(c) That the location of the principal office in this State is at Winston-Salem, County of —.

[fol. 41] (d) That the name of the agent therein and in charge thereof, upon whom process against the corporation may be served is —.

(e) That the total authorized capital stock of the corporation is —.

(f) That the amount actually issued and outstanding is —.

And I further certify that said R. J. Reynolds Tobacco Company has paid the entrance tax of 20 cents for each \$1,000.00 of the total authorized capital stock (in no case less than \$25.00) as required by the aforesaid section as amended, amounting to —, and has also paid the fee of \$5.00 for filing application for domestication, and that said corporation is authorized to transact such business in this State as is permitted by its charter and Chapter 22 of the Consolidated Statutes, entitled "Corporations," and is subject to such taxes, liabilities and restrictions as are provided by law.

In testimony whereof, I have hereunto set my hand and affixed my official seal.

Done at office in Raleigh, this the — day of — —.

J. Bryan Grimes, Secretary of State."

That thereafter the said R. J. Reynolds Tobacco Company annually paid the license tax required of foreign corporations to do business in North Carolina, accompanied by its annual report, substantially as follows:

"Annual Report from Foreign Corporation for Franchise Tax for Year 1919 to the State Tax Commission, Raleigh

In compliance with Section 82, Revenue Act 1919, the following report is made by (name of corporation:) R. J. Reynolds Tobacco Company.

Foreign Corporations

Section 4, Revenue Act * * * Nor shall any individual stockholder of any foreign corporation be required to list or pay taxes [fol. 42] on any share of its capital stock, if two-thirds in value of its entire property is situated and taxed in the State of North Carolina, or if such corporation has tangible assets within this State assessed for taxation at a value exceeding the par value of the total stock owned by citizens of this State, and the said corporation pays franchise tax on its entire issue and outstanding capital stock at the same rate as paid by domestic corporations.

Section 82, Subsection 4. Annually during the month of July, each foreign corporation for profit, doing business in the State, and

owning or using a part of its capital or plant in this State, and subject to compliance with all other provisions of law, and in addition to all other statements required by law, shall make a report in writing to the Commission in such form as the Commission may prescribe.

Subsection 5. Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary, superintendent or managing agent in this State, and forwarded to the Commission.

Subsection 6. Such report shall contain.

1. Name of Corporation: R. J. Reynolds Tobacco Co.
2. Under the laws of what State or country organized? New Jersey.
3. Location of Principal Office: Winston-Salem, N. C.
4. Name of President, Secretary, Treasurer, and Board of Directors, with postoffice address of each:

Name	Address
President..... W. N. Reynolds.....	Winston-Salem, N. C.
Secretary..... M. E. Motsinger.....	Winston-Salem, N. C.
Treasurer..... D. Rich	Winston-Salem, N. C.

Board of Directors

Name	Address
W. N. Reynolds.....	Winston-Salem, N. C.
W. R. Reynolds.....	" "
Bowman Gray	" "
C. A. Kent.....	" "
M. E. Motsinger.....	" "
D. Rich	" "
J. L. Graham.....	" "
[fol. 43] R. E. Lassater.....	Winston-Salem, N. C.
J. B. Dyer.....	" "
T. K. Kirk.....	Lexington, Ky.
Henry A. Oetjen.....	Jersey City, N. J.

5. Date of annual election of officers: First Thursday of Each April.

6. Amount of authorized capital stock: \$40,000,000.00.
7. Par value of each share: \$100.00.
8. Amount of Capital stock subscribed: \$30,000,000.00.
9. Amount of capital stock issued: \$30,000,000.00.
10. Amount of capital stock paid up: \$30,000,000.00.
11. Nature and kind of business in which corporation is engaged: Manufacturing cigarettes, plug, twist, and smoking tobacco.

12. Its place or places of business in this State: Winston-Salem, Reidsville, Mt. Airy.

13. Its place or places of business outside of this State: See list attached.

14. Name and location of its office or offices in this State: Winston-Salem.

15. Names and address of the officers or agents of the corporation in charge of its business in this State upon whom process against the corporation may be served: Officers and directors shown on first page.

16. The value of the property owned and used by the company in this State: See #23 and affidavit attached.

17. Where situated: Winston-Salem, Mt. Airy, Reidsville.

18. The value of the property owned and used by the company outside of this State: See #23 and affidavit attached.

19. Where situated: See list attached.

20. Volume of business done by the company in this State for the year ending May 31st, 1919; or other date during year on which annual reckoning is made: See No. 23.

21. Volume of business done by the company outside of this State [fol. 44] for the year ending May 31st, 1919, or other date during year on which annual reckoning is made: See No. 23.

22. Where said business is done: U. S. A., Canada and other foreign countries.

23. State whether the corporation desires to take advantage of Section 4, Revenue Act (see page 1), and have the franchise tax of forty cents on the \$1,000.00 of the entire issued and outstanding capital stock assessed against the corporation: (Yes or No.) Yes.

24. The change or changes, if any, in the above particulars, made since the last annual report: July 31st, 1918, issued and was paid for, \$5,000,000.00 capital stock.

List of names of all officers and employees resident in this State who were paid by such corporation salaries, wages or fees in excess of \$666.66 if unmarried, or \$1,000.00 if married or widow or widower with minor child or children, for eight months ending January 1st, 1919, and total amount of such compensation for said period.

Section 43 (a). Reports of Names of Officers and Employees to be Made to the State Tax Commission. That in addition to the information required by the preceding section to be reported to the State Tax Commission by domestic corporations, all corporations both domestic and foreign, doing business in this State and required by any section of the Revenue and Machinery Acts to make report to the State Tax Commission shall also be required to report to the State Tax Commission the names and places of residence of all officers and

employees of such corporations who were paid by such corporations salaries, wages or fees for the eight months ending January first, 1919, in excess of \$666.66 for unmarried person, and in excess of \$1,000.00 for married persons and widows or widowers having minor child or children and the total amount of such compensation for said period, and annually thereafter during the month of January for the preceding calendar year, the names of all officers and employees of such corporations who were paid by such corporations salaries, wages or fees in excess of \$1,000.00 for unmarried persons and \$1,500.00 [fol. 45] for married persons and widows or widowers having a minor child or children and the total amount of compensation. All such corporations shall be liable for penalties provided in section 82 of the Revenue Act for failure to make report as required by this section.

Provided, That if the person, firm, company or corporation is without knowledge that the person to whom salaries, wages, fees or commissions have been paid is unmarried or married, and is unable to ascertain such fact in each case reported, the names of such persons who receive salaries, wages, fees or commissions in excess of the minimum exemption shall be reported.

It shall be the duty of the State Tax Commission to have its Traveling Auditors make diligent investigation if all parties liable for an income tax have listed the same, and it shall also be the duty of the State Tax Commission to have investigated the reports and records of the Collectors of Internal Revenue in this State insofar as the same may be available under the Act of Congress, to the end that all parties liable for income tax in this State shall be duly charged therewith.

The State Tax Commission is forbidden to divulge or make public the information required to be reported in this section, but it shall be the duty of the State Tax Commission to furnish the information so reported to the Registers of Deeds of the several counties of the State, whose duty it shall be to compute the income tax on all such income liable for income tax within their respective counties and charge the same upon the tax books.

Name	Place of residence in this State	Salaries, wages or fees paid in excess of exemption	Total amount of compensa- tion for said year
.....
.....

James Sloan, Auditor of the above corporation, this day personally appeared before me, and, after being duly sworn to do and perform the same with fidelity and according to the best of his knowledge and [fol. 46] belief, doth state and that the questions herein contained have been answered fully and correctly, except those answered upon information and belief, and as to those he believes them to be true and correct.

Witness my hand and seal this 28th day of July, 1919.

P. C. Edgerton, Notary Public. (Seal.)

(Endorsed:) Annual Report from Foreign Corporation (Insert name and address of corporation) R. J. Reynolds Tobacco Co., Win-

ston-Salem, N. C., 1919. Proportion of authorized capital stock represented by property owned and used and business transacted in this State: \$30,000,000.00. Show name of officer making this report: ———. (Address:) ———. Return to State Tax Commission, Raleigh, N. C.

That two-thirds in value of the property of said Tobacco Company is located in or near the City of Winston-Salem in this State. That since the date of the application of said R. J. Reynolds Tobacco Company, for permission to do business in this State, it has regularly paid the license and franchise taxes required of such corporations by this State and is still doing business in this State as a corporation of the State of New Jersey. None of the stock of the said tobacco company, owned by the said George Briggs, deceased, and bequeathed by him, was in the State of North Carolina at the time of his death and never had been during the time it was owned by the said Briggs.

The defendant, A. D. Watts, Commissioner of Revenue of the State of North Carolina, levied an inheritance tax upon the transfer of 66-2/3% of the total value of the stock in the R. J. Reynolds Tobacco Company, to-wit, \$77,089.67, amounting to, at the time of the payment of the same hereinafter set out, with interest, \$2,658.85. From [fol. 47] said assessment plaintiff duly appealed to the Superior Court of Wake County.

Plaintiff contended that the estate of the late George Briggs was not liable for the payment of any inheritance tax to this State, because neither the said George Briggs, nor any of his devisees, was or ever had been, citizens of this State. None of the stock owned by the said estate had ever been subject to the taxation, and the corporation which issued said stock was not, nor had it ever been, a corporation of this State, but was a corporation of the State of New Jersey, doing business as a foreign corporation in North Carolina under and by virtue of a license issued to it as a foreign corporation by said State.

The said Commissioner of Revenue insisted upon the payment of the tax and the Tobacco Company refused to transfer the stock to plaintiff until the tax was paid. Under these circumstances, and in order to secure the transfer of this stock to plaintiff, the said amount of \$2,658.85 was paid by plaintiff as executor of George Briggs, deceased, to A. D. Watts, Commissioner of Revenue, but under protest and with the assertion that the same was not due and ought not to be paid, and that same was paid under compulsion for the purpose of securing the transfer of stock to plaintiff and that plaintiff would bring suit to recover the money paid under protest and compulsion. Plaintiff duly demanded return of the money so paid, which demand was refused, and then this action was instituted within the time prescribed by law.

The only authority the Commissioner of Revenue had to levy assessment or impose a tax upon the shares of stock in said Tobacco Company, owned by the late George Briggs, is contained in the Revenue Act of 1919, being Chapter 90, Public Laws, Section 6 and sub-section 7 thereof, which, so far as is material to this case is as follows:

Sec. 6. Rate of Inheritance Tax. From and after the passage of this act all real and personal property of whatever kind and nature [fol. 48] which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, whether the person or persons dying seized thereof be domiciled within or out of the State (or if the decedent was not a resident of this State at the time of his death, such property or any part thereof within this State,) or any interest therein or income therefrom which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, bargainor, donor or assignor, or intended to take effect in possession or enjoyment after such death, to any person or persons or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body corporate or politic shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be and hereby is made subject to a tax for the benefit of the State. * * *

"Seventh. The words 'such property or any part thereof or interest therein within this State' shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other State or country, when such incorporated company is the owner of property in this State, and if 50 per cent or more of its property is located in this State, and when bonds or shares of stock in any such company not incorporated in this state, and owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such company, and the exemptions allowed shall be the proportion of exemption allowed by this act, as related to the total value of the property of the decedent.

"If the incorporated company not incorporated in this State and owning property in this state be a railroad company, the proportion upon which the tax shall be paid shall be the proportion which the miles of road of such company in this State bear to the total miles [fol. 49] of road of such company.

"Any incorporated company not incorporated in this State and owning property in this State, which shall transfer on its books the bonds or shares of stock of any decedent holder of shares of stock in such company exceeding in par value \$500.00, before the inheritance tax, if any, has been paid, shall become liable for the payment of the said tax, and any property held by such company in this State shall be subject to execution to satisfy the same. A receipt or waiver signed by the State Tax Commission of North Carolina shall be full protection for any such company in the transfer of any such stocks or bonds.

"The State Tax Commission shall prepare and furnish upon application blank forms covering such information as may be necessary to determine the amount of inheritance tax due the State of North Carolina on the transfer of any such bonds or stock; it shall determine the value of such bonds or stock, and shall have full authority

to do all things necessary to make full and final settlement of all such inheritance taxes due or to become due, and shall make prompt return to the State Treasurer of all such taxes collected.

"The State Tax Commission shall have authority, under penalties provided in Section 82 of this Act, to require that the report necessary to a proper enforcement of this Act be made by any such incorporated company owning property in this State."

Plaintiff contends that the said Act is unconstitutional in so far as it attempts to levy or impose an inheritance succession tax upon the stock in said Tobacco Company owned by the estate of said George Briggs, deceased, because neither the said George Briggs, deceased, nor any of the devisees or beneficiaries in his will have ever been citizens or residents of or domiciled within the State of North Carolina, and because said Tobacco Company is not a corporation of North Carolina, but it now and always has been, a corporation of the State of New Jersey and that the stock itself has never been physically within the State of North Carolina.

Plaintiff further says that in so far as the quoted statute attempts to impose an inheritance, succession or transfer tax upon the said stock belonging to the estate of George Briggs in the said Tobacco Company, the same is unconstitutional, null and void, and its enforcement would be a violation both of the Constitution of the United States and the Constitution of the State of North Carolina, in the particulars set out in plaintiff's protest to the former Commissioner of Revenue, and in the complaint in this action.

That the plaintiff has set out particularly in its complaint the manner and respects in which it contends that the said statute and any attempted enforcement thereof in so far as it relates to the stock owned by the said George Briggs in the said Tobacco Company is and would be violative of plaintiff's right guaranteed to it by the Constitution of the United States and violative of the Constitution of the State of North Carolina. As the plaintiff's contentions as to the constitutionality of the Act are fully set out in the complaint the same need not be repeated here, but this agreement shall be treated as if the said portions of plaintiff's complaint were repeated herein word for word.

Since the institution of this action the defendant, A. D. Watts, has resigned his office as Commissioner of Revenue for this State and Hon. R. A. Doughton has been appointed by the Governor, confirmed by the Senate, and has duly qualified as Commissioner of Revenue and is now engaged in the performance of the duties of said office. He has consented to be made party defendant herein and to be substituted as defendant instead of A. D. Watts, late Commissioner of Revenue for the State of North Carolina, an order substituting the said R. A. Doughton for the said A. D. Watts has been duly entered in this cause.

If, upon consideration of the pleadings and of the agreement of [fol. 51] facts the Court shall be of the opinion that it is not lawful or constitutional for the General Assembly of North Carolina to impose a succession, inheritance or transfer tax upon the stock in said

Tobacco Company owned by the late George Briggs, or that the tax levied upon the transfer of said stock is not in accordance with law, it is agreed that judgment may be entered against the defendant for \$2,658.85, with interest from and after the 31st day of May, 1922, until paid, at the rate of six per centum per annum. If, on the other hand, the Court is of the opinion that the said Act of the General Assembly is constitutional and that the levy of the tax upon the transfer of said stock is lawful, then judgment shall be rendered that defendant go without day and recover his costs in this behalf incurred.

By consent, the appeal from the assessment of tax made by the Commissioner of Revenue now pending in this Court, and this action to recover the money paid as taxes under protest and with the demand for its return, and notice that suit would be brought, are hereby consolidated; and all rights of either of the parties hereto in either or both of said actions, are hereby preserved to be adjusted and administered in the action so consolidated; all technicalities being mutually waived.

Respectfully submitted, Tillinghast & Collins, Pou, Bailey & Pou, Attorneys for Plaintiff. Frank Nash, Asst. Atty. Gen., Attorney for Defendant.

IN SUPERIOR COURT OF WAKE COUNTY

JUDGMENT

This cause coming on to be heard upon the pleadings and statement of facts agreed upon by all parties, and a jury trial being waived, and the same being heard by the Court after argument of counsel:

And it appearing to the Court that the action was brought for the purpose of recovering the amount paid under protest to the Commissioner of Revenue, according to an assessment made by said Commissioner of Revenue, of the inheritance or succession tax upon the [fol. 52] devolution or transfer of certain shares of the capital stock of R. J. Reynolds Tobacco Company, a corporation of New Jersey owned by the late George Briggs, a citizen and resident of the State of Rhode Island, who died domiciled therein during the year 1919;

And it appearing to the Court that the authority for the assessment and imposition of the inheritance or succession tax upon the transfer or devolution of said stock belonging to said George Briggs, deceased, was Chapter 90, Public Laws 1919, Section 6, subsection 7 thereof, and that the said Commissioner of Revenue assessed and imposed such tax by reason of the fact that two-thirds of the total value of the property of said R. J. Reynolds Tobacco Company was situated in the State of North Carolina;

And it appearing to the Court that the plaintiff paid the tax so assessed upon the devolution of said shares of capital stock under

protest, and because the said R. J. Reynolds Tobacco Company had been notified by the Commissioner of Revenue that it could not lawfully transfer any of the shares of the capital stock of said R. J. Reynolds Tobacco Company, unless the succession or inheritance tax upon the transfer or devolution of said stock should have been paid; and that plaintiff could not secure a transfer of the said shares of capital stock without paying the tax as assessed by the Commissioner of Revenue; and that for the sole purpose of securing the transfer of said stock it paid the tax demanded by the Commissioner of Revenue, but under protest; and that thereafter it demanded return of the tax so paid, and within the time prescribed by law brought this action to recover the same;

And it being agreed by the parties hereto that the decision of this action depends upon the legality and constitutionality of the said act of the General Assembly of 1919, and the assessment made by the Commissioner of Revenue under the terms of said Act;

And it being agreed that if the Court should be of the opinion that the said Act of the General Assembly, and the effort of the Commissioner of Revenue to assess an inheritance or succession tax upon [fol. 53] the transfer of the shares of capital stock belonging to the late George Briggs as aforesaid, were in contravention either of the First Section of the 14th Amendment to the Constitution of the United States, or in contravention of Article 1, section 17 of the Constitution of North Carolina, both of which provisions were expressly set up by plaintiff and relied upon as grounds for this action and as defenses against the assessment or imposition of an inheritance or succession tax upon the transfer or devolution of the shares of stock as aforesaid, then judgment should be rendered in favor of plaintiff and against defendant for the sum of \$2,658.85, being the amount paid by plaintiff under protest upon the transfer of said stock as aforesaid, with interest from the date of payment, and the costs of this action;

And it being further agreed that if the Court should be of the opinion that the said Act of the General Assembly, and the act of the Commissioner of Revenue in assessing and enforcing the inheritance or succession tax upon the devolution or transfer of the shares of capital stock of R. J. Reynolds Tobacco Company, belonging to the late George Briggs, was not in violation of said sections of the Constitutions of the United States and of North Carolina; but was a legal and valid exercise of the taxing powers of this State, then judgment should be rendered that plaintiff take nothing by this suit, and that defendant recover of plaintiff, and the surety on its prosecution bond, the costs of this action to be taxed by the Clerk of this Court;

And it further appearing that since the institution of this action, and the appeal from the assessment, the said action and appeal have by consent been consolidated, and are both heard and determined in this action; and that R. A. Doughton has, by consent, been substituted as defendant in place of A. D. Watts, resigned;

And the Court, after the hearing of argument and consideration of the case, being of the opinion that the Act of the General Assembly

of 1919 was a valid exercise of the taxing powers of this State; and that it was not in contravention of either the First Section of the 14th [fol. 54] Amendment to the Constitution of the United States, nor of Article 1, section 17, of the Constitution of North Carolina, insofar as it was attempted by said Act and by the assessment of the Commissioner of Revenue thereunder to impose an inheritance or succession tax upon the transfer or devolution of the shares of the capital stock of R. J. Reynolds Tobacco Company owned by the late George Briggs; but that the said Act of the General Assembly, and the proceedings of the Commissioner of Revenue thereunder in assessing and imposing the said tax upon the said shares of stock, were in all respects valid exercises of the taxing powers of this State;

Now, therefore, on motion of Hon. Frank Nash, Assistant Attorney General, it is ordered, decreed and adjudged by the Court that plaintiff, Rhode Island Hospital Trust Company, Executor of George Briggs, deceased, take nothing by this suit; and that defendant, R. A. Doughton, Commissioner of Revenue, recover of said plaintiff, and the surety on its prosecution bond, the costs of this action to be taxed by the Clerk of this Court;

It is further adjudged that the assessment by the former Commissioner of Revenue of the succession or inheritance tax upon the shares of stock in R. J. Reynolds Tobacco Company, owned by the late George Briggs, be, and the same is, in all respects, approved and confirmed.

This is the final judgment in this action.

E. H. Cranmer, Judge Presiding.

IN SUPERIOR COURT OF WAKE COUNTY

STIPULATION RE TRANSCRIPT OF RECORD

To the foregoing judgment plaintiff objects and excepts in open court, and craves an appeal to the Supreme Court. The said appeal is duly allowed in open Court, and defendant accepts notice of said appeal, and waives any other and further notice. By consent it is agreed that the summons, the pleadings, the agreed statement of facts and this judgment shall constitute the case on appeal for the Supreme Court; and plaintiff is allowed to file with the Clerk of this Court such assignments of errors as it may desire. Appeal bond fixed at \$50.00.

E. H. Cranmer, Judge Presiding.

[fol. 55] We, attorneys for plaintiff and defendant respectively, agree that the Clerk shall make out the transcript for the Supreme Court in accordance with the foregoing statement, and that the same be docketed in the Supreme Court as early as practicable. All notices, technicalities and formalities waived.

Pou, Bailey & Pou, Attys. for plaintiff, Appellant. Frank Nash, Asst. Atty. General, Atty. for Defendant.

IN SUPERIOR COURT OF WAKE COUNTY

ASSIGNMENTS OF ERROR

Plaintiff, Rhode Island Hospital Trust Company, Executor of George Briggs, deceased, excepts to the judgment rendered by His Honor, Judge E. H. Crammer, and makes to the said judgment the following assignments of error:

1. That the said judgment is erroneous in that it holds that section 6, subsection 7, of Chapter 90, Public Laws of North Carolina, 1919, imposes an inheritance or succession tax upon the transfer or devolution of shares of stock in R. J. Reynolds Tobacco Company, a corporation of New Jersey, owned by the late George Briggs, a citizen and resident of Rhode Island, and who died domiciled in said State.

2. That the said judgment is erroneous in that it holds that it was competent and constitutional for the General Assembly of North Carolina to enact a statute which would impose an inheritance or succession tax upon the devolution or transfer of the said shares of stock.

3. That as construed by the Court as imposing a succession or inheritance tax upon the devolution or transfer of shares of stock as aforesaid, the said subsection 7 of section 6 of Chapter 90, Public Laws of 1919 is unconstitutional, null and void, in that it is a violation of the First section of the 14th Amendment to the Constitution of the United States. That it is violative of said First Section of the 14th Amendment to the Constitution of the United States, because as construed by the Court it would be the taking of the property of plaintiff without due process of law, and would be a taking of plaintiff's property for public purposes without compensation. Plaintiff pleaded and expressly set up and relied upon the said First Section of the 14th Amendment to the Constitution of the United States, as a bar to such construction and operation of the statute, and as a protection against and a defense to the imposition of such unlawful tax.

4. That the said statute as construed by the Court violates Article 1, Section 17, of the Constitution of North Carolina, and plaintiff has set up and relied upon said Article 1, section 17, of the Constitution of North Carolina, as a defense to the imposition of the said illegal tax.

5. That said judgment is erroneous in that it adjudges that it is competent and lawful for the General Assembly of this State to enact a statute which will impose a tax upon the devolution or transfer of shares of stock in R. J. Reynolds Tobacco Company, a corporation of New Jersey, owned by George Briggs, lately a citizen and resident of the State of Rhode Island, and who resided and was domiciled in said State at the time of his death, and who never had been a citizen or resident of the State of North Carolina, and when the transfer of the shares of stock formerly owned by the said

George Briggs was to be effected at the transfer office of R. J. Reynolds Tobacco Company in the City of New York.

6. That the said judgment is erroneous because it holds valid and seeks to enforce the imposition and collection of an inheritance or succession tax upon the devolution or transfer of shares of stock in the R. J. Reynolds Tobacco Company, a corporation of New Jersey, owned by the late Geo. Briggs, a citizen and resident of the State of Rhode Island. That the said George Briggs never was or had been a citizen or resident of North Carolina, and the said R. J. Reynolds Tobacco Company never had been a corporation organized by the State of North Carolina, and never maintained its principal office, nor its office for the transfer of stock, in this State; and that no part of the proceedings necessary to administer the estate of the said [fol. 57] George Briggs, nor to transfer stock in said R. J. Reynolds Tobacco Company belonging to said George Briggs, were performed or were required to be performed within the State of North Carolina; but that all of said acts were performed entirely outside of and beyond the jurisdiction of said State of North Carolina.

7. That the said judgment is erroneous because it fails to adjudge that plaintiff was not subject to the inheritance or succession tax to the State of North Carolina upon having the shares of stock in said Tobacco Company transferred from the name of George Briggs to plaintiff in accordance with the will. Said judgment should have decreed that plaintiff was not liable for any such tax to the State of North Carolina, and was entitled to have the said stock transferred without the payment of tax to said State; and that when plaintiff was required to pay under protest the inheritance or succession tax upon the transfer or devolution of said stock, the same was contrary to law, deprived plaintiff of its rights, and was a taking of plaintiff's property without due process of law, contrary to law, and was a denial to plaintiff of the equal protection of the law; and in violation of the First Section of the 14th Amendment to the Constitution of the United States, and also in violation of Article 1, Section 17, of the Constitution of North Carolina.

8. That said judgment was erroneous in that it failed to adjudge that plaintiff was entitled to recover of defendant the sum of \$2,-658.85, paid under protest and under necessity, upon the transfer of the shares of the capital stock of R. J. Reynolds Tobacco Company, formerly belonging to George Briggs, to plaintiff.

9. Plaintiff excepts to each and every part and clause of said judgment.

Pou, Bailey & Pou, Attys. for Plaintiff, Appellant.

(Transcript certified by Clerk Superior Court Wake County, 15 May, 1923.)

[fol. 58] IN SUPREME COURT OF NORTH CAROLINA

DOCKET ENTRIES

Appeal docketed 16 May 1923; case argued 3 October 1923; opinion 27 February 1924 by Stacy, J., as follows:

[fol. 59] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

Appeal by Plaintiff from Cranmer, J., at March Term, 1923, of Wake

Civil action to recover the amount of an inheritance tax, or transfer tax, paid by plaintiff under protest and sought to be regained by this suit.

From a judgment as of non-suit, or one denying recovery, the plaintiff appeals.

Colin McRae Makepeace, Tillinghast & Collins, and Pou, Bailey & Pou, for plaintiff.

Attorney-General Manning and Assistant Attorney-General Nash for defendant.

OPINION

STACY, J.:

The Rhode Island Hospital Trust Company of Providence, Rhode Island, executor under the will of George Briggs, deceased, brings this suit to recover of the defendant, Commissioner of Revenue of North Carolina, the sum of \$2,658.85, being the amount exacted by the defendant and paid by the plaintiff, involuntarily and under protest, by way of an inheritance tax, or a transfer tax, on shares of stock owned by decedent at the time of his death, in the R. J. Reynolds Tobacco Company, a corporation chartered under the laws of the State of New Jersey, and domesticated in the State of North Carolina under C. S. 1181, with its principal place of business in this State and with two-thirds of the total value of its property located herein. The said corporation maintains a transfer office in the City of New York, and the paper certificates representing the shares of stock owned by the decedent at the time of his death have never been in this State. George Briggs was not a resident of North Carolina, but during his lifetime, or at least the latter part thereof, he resided [fol. 60] in the State of Rhode Island and was a citizen of that State at the time of his death, 29 October, 1919. None of the beneficiaries under his will live in North Carolina. The question, therefore, directly presented is whether the Legislature of this State can impose an inheritance tax, or a transfer tax, upon the right of non-resident legatees or distributees to take by will, or to receive under the intestate laws of another state, from a non-resident testator or

intestate, shares of stock in the R. J. Reynolds Tobacco Company, and to require the payment of such tax as a condition precedent to the right to have said stock transferred on the books of the corporation. A satisfactory answer to this question would seem to necessitate an examination into the basic character of the tax imposed.

But before entering upon an investigation of this nature, we observe a suggestion by the plaintiff that the statute in question, Chap. 90, Public Laws, 1919, now C. S. 7772, et seq., does not warrant the interpretation placed upon it by the defendant and the State Tax Commission. This position, on the argument, was not made the subject of serious debate. Indeed, we think there is but little room for construction. The statute undertakes to impose an inheritance tax upon the transfer of all real and personal property of every kind and description and "such property or any part thereof or interest therein within this State", which shall pass by will, or by operation of law, from a testator to his legatees or devisees, or from an intestate to his heirs or distributees; and sec. 6, in part, provides:

"The words, 'such property or any part thereof or interest therein within this State', shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other state or country, when such incorporated company is the owner of property in this State, and if 50 per cent or more of its property is located in this State, and when bonds or shares of stock in any such company not incorporated in this State, and owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such company, and the exemption allowed shall be the proportion of exemption allowed by this act, as related to the total value of the property of the decedent."

It is clear, we think, from the language used, that the Legislature intended to levy the tax imposed and which is sought to be recovered in this suit.

Plaintiff's next position is that, if the law is to be construed so as to authorize an imposition of the tax in question, then the statute is unconstitutional, both under Art. I, Sec. 17 of the State Constitution and also under the Fourteenth Amendment to the Constitution of the United States. This brings us to a consideration of the nature of the tax in dispute.

There has been and still is some slight difference of opinion among courts as to the exact nature of an inheritance tax. It is agreed, however, that such a tax is levied, not upon the property itself, but upon its transfer, change of ownership, or devolution. The principle difference arises over the question as to whether the tax is laid on the privilege of transmitting property or on the privilege of receiving the property so transmitted. *Prentiss v. Eisner*, 267 Fed., 16. The former is sometimes called a transmission tax or legacy tax, while the latter is usually styled a succession tax. But in each instance, it is

generally conceded that the tribute or contribution exacted before the property can pass from the dead to the living, or from the testator to the objects of his bounty, has some of the characteristics of an excise or custom duty. It is a ransom or toll levied upon the right to transmit or upon the right to receive property, the transmission or receipt of which is occasioned by death. In *Re Inman*, 199 Pac. (Or.), 615, 16 A. L. R., 675.

In this State, the particular tax now in question is imposed upon the right of succession.

"We do not regard the tax in question as a tax on property, but rather as a tax imposed on the succession; on the right of a legatee to take under the will, or of a collateral distribution in the case of intestacy * * * Neither can it be held a tax on property merely because the amount of the tax is measured by the value of the property." *Rodman, J., in Pullen v. Comrs.*, 66 N. C., p. 363. [fol. 62] "The theory on which taxation of this kind on the devolution of estates is based and its legality upheld is clearly established and is founded upon two principles: (1) A succession tax is a tax on the right of succession to property, and not on the property itself; (2) The right to take property by devise or decent is not one of the natural rights of man, but is the creature of the law." *Brown, J., in In re. Morris Estate*, 138 N. C., p. 262. See, also *Corp. Com. v. Dunn*, 174 N. C., 679; *Norris v. Duffy*, 168 N. C., 321; *In Re Inheritance Tax*, 168 N. C., 356; *S. v. Bridgers*, 161 N. C., 247.

It clearly appears, we think, from the language of the statute under which the present tax is imposed, that the Legislature intended to levy an inheritance tax, with certain exceptions, on the succession or devolution of all real and personal property, of every kind and description within the jurisdiction of the State, and upon any interest therein, whether owned by a resident or non-resident at the time of his death.

It is universally conceded that a state may levy an inheritance tax on the transfer by will or devolution of all property within the power of its reach, whether such property be real or personal, tangible or intangible, corporeal or incorporeal. *Hooper v. Shaw*, 176 Mass., 190; *Morrow v. Durant*, 118 N. W. (Ia.), 781; *Neilson v. Russell*, 69 Atl. (N. J.), 476; *Plummer v. Coler*, 178 U. S., 115; Note 127 A. S. R., 1059; 26 R. C. L., 208. Construing the succession-tax law of Massachusetts, *Knowlton, C. J., in Kinney v. Stevens*, 207 Mass., 368, said:

"This language indicates an intention on the part of the legislature to tax all property that it has the power to tax. The statute is as broad as the jurisdiction of the commonwealth."

And the same may be said of the North Carolina statute.

It is equally well established that a state tax on property must be limited to property within the territorial jurisdiction of the state.

"Property situated without that jurisdiction is beyond the State's taxing power, and the exaction of a tax upon it is in violation of the

Fourteenth Amendment to the Constitution." *Metropolitan Life Ins. Co. v. New Orleans*, 205 U. S., 395; *Wallace v. Hines*, 253 U. S., 66; *Western Union Tel. Co. v. Kansas*, 116 U. S., 1; *Tappan v. Merchants Nat. Bank*, 19 Wall., 490.

[fol. 63] But the tax now under consideration is not a direct tax on property. It is a tax imposed upon the transfer, transaction, or right of succession, and is merely measured in amount by the value of the property transferred. *S. v. Bullen*, 143 Wis., 512; *Magonn v. Bank*, 170 U. S., 298; *U. S. v. Perkins*, 163 U. S., 625; *Nettleton's Appeal*, 76 Conn., 242; *Thompson v. Kidder*, 74 N. H. 92; *Minot v. Winthrop*, 162 Mass., 118; *S. v. Hamlin*, 86 Me., 503. It "has ever been treated as a duty or excise, because of the particular occasion which gives rise to its levy." *New York Trust Co. v. Eisner*, 256 U. S., 345.

"As to residents, the transfer tax is on the succession, and is imposed on the right of succession; but, as to non-residents, it is a tax on the transfer of property within the jurisdiction of the court." *Patterson, J.*, in *In Re Bishop*, 81 N. Y. Sup., 474.

Undoubtedly the State has power to levy an inheritance tax in respect to all property upon which it has power to impose an ordinary property tax, and, in addition thereto, it has the power to impose a succession tax in respect to certain property upon which it cannot levy an ordinary property tax. *State ex rel. Graff v. Probate Court*, 128 Minn., 371. For example, no state, in the exercise of its general power of taxation, can levy a direct tax on obligations of the United States, and yet a legacy of United States bonds is not exempted from the inheritance-tax laws of a state, because such tax is not laid on the bonds themselves, but on the right to acquire them by will, or by devolution in case of intestacy. *Plummer v. Coler*, 178 U. S., 115. So, also, a state may tax the inheritance of its own bonds, or bonds of municipal corporations, though it expressly provided, when the bonds were issued, that they should be exempt from taxation. *Orr v. Gilman*, 183 U. S., 278.

The tax in question being upon the right of succession and not upon the property transferred or received, it is not subject to the constitutional limitations with respect to uniformity and equality, nor is it a "direct tax" within the meaning of the Constitution of the United States. *Scholey v. Rew*, 23 Wall., 331; 26 R. C. L., 196.

[fol. 64] "Whether an inheritance tax shall be laid or not, and the rate thereof, and the exemptions allowed, are matters which rest in the power and discretion of the law-making department." *Clark, C. J.*, in *Corp. Com. v. Dunn*, 174 N. C., p. 681.

"A succession tax is not a property tax upon the privilege of receiving property by intestate or testate succession. It is in the strict sense an excise tax. It is like a transfer or other excise tax. It need not be proportional under our Constitution. It is not subject to the restrictions and limitations which attach to property taxes under the Federal Constitution. (Citing authorities.) Excise or succession

taxes may be measured in part at least by the value of property which is exempt from taxation, such as government bonds, merchandise in bond, and other like tax exempt property." Rugg, C. J., in *Welch v. Treasurer*, 223 Mass., 87.

The personal property of a decedent, whatever its character, and wherever located, is subject to an inheritance tax in the state of which its owner was a resident at the time of his death. *Bullen v. Wisconsin*, 240 U. S., 625. This position is upheld upon the principle that the situs of personal property, for the purpose of taxation, is said to be in that state where the owner resides and has his domicile. *Mobilia sequuntur personam*. *Gallup's Appeal*, 76 Conn., 617; *In Re Swift*, 137 N. Y., 77; *People v. Union Trust Co.*, 255 Ill., 168; *McCurdy v. McCurdy*, 197 Mass., 248; *In re Hartman*, 70 N. J. Eq., 664.

In *Frothingham v. Shaw*, 175 Mass., 59, a resident of Massachusetts died owning stocks and bonds of foreign corporations and money in bank in the State of New York. An inheritance tax imposed by the domiciliary state on the personal property in New York was assailed upon the ground that this personal property was not "property within the jurisdiction of the commonwealth of Massachusetts." And further that the succession as to this property in New York took place under the laws of that State and not under the laws of Massachusetts. Speaking to these two contentions, the Court said:

1. "In arriving at the amount of the tax the property within the jurisdiction of the commonwealth is considered, and we see no reason [fol. 65] for supposing that the legislature intended to depart from the principle heretofore adopted, which regards personal property for the purposes of taxation as having a situs at the domicile of its owner."

2. "The petitioners further contend that the succession took place by virtue of the law of New York. But it is settled that the succession to movable property is governed by the law of the owner's domicile at the time of his death. This, it has been often said, is the universal rule, and applies to movables wherever situated. * * * If there are movables in a foreign country, the law of the domicile is given an extraterritorial effect by the courts of that country, and in a just and proper sense the succession is said to take place by force of and to be governed by the law of the domicile. Accordingly it has been held that legacy and succession duties as such were payable at the place of domicile in respect to movable property wherever situated, because in such cases the succession or legacy took effect by virtue of the law of domicile."

See, also, in *Re Helena*, 236, Pa., 213, as reported in 46 L. R. A. (N. S.), 1167, where a wealth of information on the subject will be found in the valuable and exhaustive note compiled by the annotator.

Among the classes of personal property, the succession to which it has been held may be taxed at the domicile of the owner, are shares of

stock in foreign corporations. In *re* Hodges, 170 Cal., 492; In *re* Bullen, 143 Wis., 512; *Hawley v. Malden*, 232 U. S., 1.

On the other hand, the state creating a corporation has the power to impose an inheritance tax upon the transfer by will or devolution of the stock of such corporation, held by a non-resident at the time of his death; and this by virtue of the authority of the chartering state to determine the basis of organization and the liability of all of its shareholders. *Corry v. Baltimore*, 196 U. S., 466; *Moody v. Shaw*, 173 Mass., 205; In *Re Culver*, 145 Iowa, 1; *People v. Griffith*, 245 Ill., 532; *Dixon v. Russell*, 78 N. J. L., 296; In *Re Bronson*, 150 N. Y., 1; In *Re Whiting*, 150 N. Y., 27; 26 R. C. L., 216. Speaking to this question in *Greves v. Shaw*, 173 Mass., 205, Knowlton, J. said:

[fol. 66] "Such a corporation, being in a sense a citizen of this State, and having an abiding place here akin to the domicile of a natural person, is subject to the jurisdiction of the Commonwealth, and is in fact with the Commonwealth. The stockholders are the proprietors of the corporation, which is itself the proprietor of the property owned and used for the ultimate benefit of the stockholders. While the corporation has a full and complete legal title to the corporate property, its ownership is in a sense fiduciary; for on winding up its affairs the surplus, after the payment of debts, must be divided among the stockholders," citing *Fisher v. Essex Bank*, 5 Gray, 373-377; *Field v. Pierce*, 102 Mass., 253; *Graham v. La Crosse & Milwaukee R. R.*, 102 U. S., 148; *Hollins v. Brierfield Coal & Iron Co.*, 150 U. S., 371.

Thus it is seen that under the fiction of *mobilia sequuntur personam*, the universal succession may be taxed in one state—the domiciliary state—while according to the fact of power the singular succession may be taxed in another. *Knowlton v. Moore*, 178 U. S., 53; *Coe v. Errol*, 116 U. S., 517. As said in *Hartman's Case*, 70 N. J. Eq., p. 667:

"The great weight of authority favors the principle adopted by the New York court of appeals, holding that the tax imposed is on the right of succession under a will, or by devolution in case of intestacy; and that as to personal property, its situs, for the purpose of a legacy or succession tax, is the domicile of the decedent, and the right to its imposition is not affected by the statute of a foreign state, which subjects to similar taxation such portion of the personal estate of any nonresident testator or intestate as he may take and leave there for safe keeping, or until it should suit his convenience to carry it away."

An imadverting upon this situation in *Blackstone v. Miller*, 188 U. S., 189, Mr. Justice Holmes remarked:

"No one doubts that succession to a tangible chattel may be taxed wherever the property is found, and none the less that the law of the situs accepts its rules of succession from the law of the domicile, or that by the law of the domicile the chattel is part of a universitas and is

taken into account again in the succession tax there. (Citing authorities.)

[fol. 67] "No doubt this power on the part of two states to tax on different and more or less inconsistent principles leads to some hardship. It may be regretted, also, that one and the same state should be seen taxing on the one hand according to the fact of power, and on the other, at the same time, according to the fiction that, in succession after death, *mobilia sequuntur personam* and domicile governs the hole. But these inconsistencies infringe no rule of constitutional law."

Again, in *Kidd v. Alabama*, 188 U. S., 730, the same learned Justice took occasion to say:

"No doubt it would be a great advantage to the country and to the individual states if principles of taxation could be agreed upon which did not conflict with each other, and a common scheme could be adopted by which taxation of substantially the same property in two jurisdictions could be avoided."

Every presumption is indulged in favor of the validity, or constitutionality, of an act of the law-making body, and, hence, the courts do not hesitate to disregard the maxim *mobilia sequuntur personam*, where fiction runs counter to fact, or to resort to it, in order to uphold a statute. And though this may lead inevitably to double taxation, it apparently violates no constitutional provision. *Mann v. Carter*, 74 N. H., 345, 15 L. R. A. (N. S.), 150; *In Re Hodges*, 170 Cal., 492. In the case of *In re Whiting*, 150 N. Y., 27, Vann, J., in construing a succession-tax statute, and speaking for the Court, said:

"Thus the legislature intended, as I think, to repeal the maxim *mobilia personam sequuntur*, so far as it was an obstacle, and to leave it unchanged, so far as it was an aid, to the imposition of a transfer tax upon all property in any respect subject to the laws of this state."

"For certain purposes the maxim of the common law was '*mobilia sequuntur personam*,' but that maxim was never of universal application and seldom interfered with the right of taxation." Mr. Justice Brewer in *Adams Express Co. v. Auditor*, 166 U. S., 185.

Under the New York statute, prior to the amendment of 1911, bonds of a foreign corporation, as well as bonds and certificates of stock of domestic corporations, when deposited in a safe-deposit vault within that State, and owned by a non-resident, were held to be [fol. 68] "property within the State" and subject to an inheritance tax, although, so far as appears, they were present merely for safe-keeping. *In re Whiting*, *supra*; 26 R. C. L., 214. See, also, *Wheeler v. Sohmer*, 233 U. S., 434.

"It is well settled that bank bills and municipal bonds are in such a concrete tangible form that they are subject to taxation where found, irrespective of the domicile of the owner. * * * Notes and mortgages are of the same nature; * * * we see no reason

why a state may not declare that, if found within its limits, they shall be subject to taxation." Mr. Justice Brewer in *New Orleans v. Stempel*, 175 U. S., 309.

"Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more than archaic conditions," says Mr. Justice Holmes in *Blackstone v. Miller*, supra, a case in which the question presented was whether the State of New York had the right to tax a transfer by will of personal property in that State owned by a testator who had died domiciled in Illinois and where the whole estate, including the property in New York, had been taxed in the domiciliary State of Illinois. The New York statute was upheld and the tax imposed thereunder sustained.

The common-law rule that personal property follows the person (hence its name) and has its situs at the domicile of the owner, is a legal fiction which must give way, in matters of taxation, to the real facts of the case. *Green v. Van Buskirk*, 7 Wall., 139; *St. Louis v. Wiggins Ferry Co.*, 11 Wall., 423. It has been doubted by some as to whether this rule ever had any just application to shares of stock in incorporated companies, which, for most purposes, must be controlled by the *lex loci* of the corporation. Story on Conflict of Laws, 7th Ed., Secs. 364, 383, and authorities cited; *Kidd v. Alabama*, supra.

"And in states bound together by a constitution and subject to the Fourteenth Amendment, great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact." *McDonald v. Mabce*, 243 U. S., 90.

A certificate of stock is simply a written acknowledgment by a corporation of the interest of the holder in its property and franchises. [fol. 69] It has no value, except that derived from the company issuing it; and its legal status is in the nature of a chose in action. The value of all the property owned by a corporation, of whatever kind, including its franchise, is the true and fair measure of the value of all of its stock. When it is said that a person owns a certain number of shares of stock in a corporation, it is meant that such person has a right to participate in the profits of the corporation, and in its property on dissolution, after payment of its debts, in the proportion that the number of his shares bears to the whole capital stock. *Clark on Corporations*, Chap. 10; *R. R. v. Comrs.*, 87 N. C., 426; *Redmond v. Comrs.*, 87 N. C., 122.

That the stock of a corporation has no intrinsic value separate and apart from the property of the corporation is clearly shown from what is said in *Gibbons v. Mahon*, 136 U. S., 549, and *Towne v. Eisner*, 245 U. S., 418, relative to a stock dividend:

"A stock dividend really takes nothing from the property of the corporation, and adds nothing to the interests of the shareholders. Its property is not diminished, and their interests are not increased. After such a dividend, as before, the corporation has the title in all the corporate property; the aggregate interests therein of all the shareholders are represented by the whole number of shares, and the pro-

portional interest of each shareholder remains the same. The only change is in the evidence, which represents that interest, the new shares and the original shares together representing the same proportional interest that the original shares represented before the issue of new ones. * * * In short, the corporation is no poorer and the stockholder is no richer than they were before."

See, also, *Logan County v. U. S.*, 169 U. S., 255.

But more directly to the point at issue is the language of Chief Justice Chase in *Van Allen v. The Assessors*, 70 U. S., 598:

"It is true that the shareholder has no right to the possession of any part of the corporate property while the corporation exists and its affairs are honestly managed. He has committed his interest, for a time, to the possession and control of the corporation of which he is a member, and he has only a member's voice in the management of it. [fol. 70] "So a man who has leased a farm has no right to possession or control during the lease; but who denies his property in the farm? And if a dozen owners join in the lease, has not each one an interest in the property to the extent of one-twelfth?"

"So, if for the time the property of the shareholder is placed beyond his direct control and converted into property of the association, how can that circumstance affect the intrinsic character of his shares as shares of the whole corporate property? How can a man's shares of any property be the subject of valuation at all if not with reference to the amount and productiveness of the property of which they are a part? What value can they have except that given them by that amount and that productiveness? A certificate of title to a share is not a share. It is evidence of the shareholder's interest. His interest may be transferred by the transfer of the certificate; but it is not the certificate that is valued when the worth of the share is estimated either by the speculator in the market or by the tax assessor. It is the property which it represents that is valued by the speculator often with reference to speculation only, but by the public officer, always, if he does his duty, by the real worth of the property, all things considered."

To like effect is the language of Gray, J., in the case of *In Re Branson*, 150 N. Y., p. 8:

"The shareholders are persons who are interested in the operation of the corporate property and franchises and their shares actually represent undivided interests in the corporate enterprise. The corporation has the legal title to all the properties acquired and appurtenant; but it holds them for the pecuniary benefit of those persons who hold the capital stock. They appoint the persons to manage its affairs; they have the right to share in surplus earnings and, after dissolution, they have the right to have the assets reduced to money and to have them ratably distributed. Each share represents a distinct interest in the whole of the corporate property. As said in *Jermain v. L. S. & M. S. R. Co.* (91 N. Y., 492), it 'represents the interest which the shareholder has in the capital and net earnings of the corporation'; or, as Parke, B., put it, in *Bradley v. Holdsworth* (3 M. & W. at p. 424), it

[fol. 71] is 'a right to have a share of the net produce of all the property of the company.' Corporate shares must be regarded as property within the broad meaning of that term. Certificates of stock, in the hands of their holder, represent the number of shares which the corporation acknowledges that he is entitled to. In legal contemplation the property of the shareholder is either where the corporation exists, or at his domicile; accordingly as it is considered to consist in his contractual rights, or in his proprietary interest in the corporation. * * * Hence, it cannot be said, if the property represented by a share of stock has its legal situs either where the corporation exists, or at the holder's domicile, as we have said in the *Enston* and *James* cases, (In re *Enston*, 113 N. Y. 181; in re *James*, 144 id. 12), that the state is without jurisdiction over it for taxation purposes. As personalty, the legal situs does follow the person of the owner; but the property is in his right to share in the net produce, and eventually, in the net residuum of the corporate assets, resulting from liquidation. That right as a chose in action must necessarily follow the shareholder's person; but that does not exclude the idea that the property, as to which the right relates and which is, in effect, a distinct interest in the corporate property, is not within the jurisdiction of the state for the purpose of assessment upon its transfer through the operation of any law, or of the act of its owner."

See, also, quotation from Knowlton, J., in *Greves v. Shaw*, *supra*.

It has been held that the owner of shares of stock in a corporation, organized for pecuniary profit, has an insurable interest in the corporate property—any qualified interest or any interest in the subject-matter being an insurable interest. *Warren v. Ins. Co.*, 31 Iowa, 464; *Seeman v. Ins. Co.*, 21 Fed., 778; *Ætna F. Ins. Co. v. Kennedy*, 161 Ala., 600. See, also, *Batts v. Sullivan*, 182 N. C., 129.

The basis of the rule making a corporation a distinct entity and the reasons for departing from such rule will be found in 14 C. J., 59:

"Although the doctrine that a corporation is a legal entity and person in the law distinct from the members who compose it will always be recognized and given effect, both at law and in equity, in cases [fol. 72] which are within its reason and when there is no controlling reason against it, and although in some cases it seems to have been given effect contrary to reason, it is clear that a corporation is in fact a collection of individuals who, in the case of modern private corporations, really own its property and carry on the corporate business, through the corporation and its officers and agents, for their own profit or benefit, and that the idea of the corporation as a legal entity or person apart from its members is a mere fiction of the law introduced for convenience in conducting the business in this privileged way; and it is now well settled, as a general doctrine, that, when this fiction is urged to an intent not within its reason and purpose, it should be disregarded and the corporation considered as an aggregation of persons, both in equity and at law."

It has been the policy of the Legislature of this State since 1887, to treat the interest of a stockholder in a domestic corporation, for

purposes of taxation, as identical with that of the corporation; and hence an individual stockholder is not required to list his shares of stock for taxation, where the State has already exercised the right to tax such shares through the corporation itself, or "at its source," as it is sometimes called. Speaking of this identification of the capital stock of a domestic corporation, in the hands of a shareholder, with the property of the corporation, for purposes of taxation, Adams, J., in *Person v. Watts*, 184 N. C., 499, said:

"So, by virtue of the statute there is nothing of value possessed by a corporation that is allowed to escape taxation. Certainly there can be no doubt that the shareholder's 'investment' is taxed as the Constitution requires. The truth is, the certificate of stock represents the shareholder's investment in the corporation as the landowner's deed represents his investment in the land. If the land is taxed, why tax the deed? If the capital stock is taxed, why tax the certificates which represent the capital stock? No doubt the Legislature possesses the power to repeal the statute and to tax both; no doubt it possesses the power to devise a system of taxation that would be more burdensome to all classes, but if the Constitution does not require it, why should such additional burden be imposed? It is not denied that [fol. 73] shares of stock in a restricted sense are the individual property of the owner, and in such sense may be considered as separate from the capital stock. The holder may sell his certificate without the consent of the company, but in doing so he sells only his interest in the corporation. His interest as a shareholder may become adverse to that of the corporation, but by investing in the capital stock he parts with the individual control of his money. It is only in this limited sense that shares of stock are separate from the corporation. In a broader and more real sense the interest of the shareholder is inseparable from that of the corporation. In the larger sense there is but one property, for shares of stock have value only as the taxed property of the corporation has value. During his lifetime the owner can derive no income from his shares unless the business of the corporation earns a profit; and upon his death, when his personal property passes to his distributee, it is not the certificate that is subject to an inheritance tax, but under a special statute the value of the owner's interest in the corporation represented by the certificate, just as such tax is assessed, not upon the deed, but upon the value of the land which descends from the ancestor to the heir. It seems, therefore, to be unquestionable that if the corporation be required to pay a tax on the capital stock as it is valued under the statute and the shareholders a similar tax on all their shares double the amount of the money or property contributed by the shareholders is thereby taxed, and no play upon words can escape the logic of this conclusion. The Constitution neither forbids nor requires double taxation, but the Legislature has refrained from levying the double tax. The Constitution requires that investments in stocks shall be taxed, but it does not forbid the exemption of shares from taxation when the capital stock itself is taxed. And as the controversy turns upon the validity or invalidity of the statutory exemption of shares of stock it is apparent that the question whether taxing the individual shares as well

as the capital stock is called double taxation is not as affecting the merits of the appeal a matter of material concern."

[fol. 74] This same rule is extended to certain foreign corporations and is applicable to the R. J. Reynolds Tobacco Company (of which its resident stockholders have taken advantage), as witness the following provision in the general revenue law:

"Nor shall any individual stock of any foreign corporation be required to list or pay taxes on any share of its capital stock if two-thirds in value of its entire property is situated and taxed in the State of North Carolina, or if such corporation has tangible assets within this State assessed for taxation at a value exceeding the par value of the total stock owned by citizens of this State, and the said corporation pays franchise tax on its entire issued and outstanding capital stock at the same rate as paid by domestic corporations."

Thus it will be seen that, for all practical purposes, so far as the question of taxation is concerned, the R. J. Reynolds Tobacco Company stands on substantially the same footing as a domestic corporation. It has come into the State upon this condition and accepted the benefit of our laws. It has domesticated here.

Applying the principle, above stated, to the instant case, it is apparent, we think, that Legislature intended to put aside the fiction of separate interests between the corporation and its shareholders and to impose an inheritance tax upon the transfer by will or devolution of the interests of non-resident stockholders in corporations, chartered in any other state or country, "when such incorporated company is the owner of property in this State, and if 50 per cent or more of its property is located in this State." Unless this view is to prevail, a corporation, created under the laws of another state, may come into North Carolina, with all its property located here and protected by our laws, with its entire business carried on in this State, and yet the holdings of every non-resident stockholder would be exempt from our inheritance-tax laws. It was the purpose of the Legislature to prevent such a contingency or possibility.

The foregoing considerations distinguished the case at bar from those cited and relied upon by appellant; but, if not entirely so, we must decline to follow them, as we think the act in question is constitutional.

The transfer now under consideration took place certainly by the permutation and under the ultimate protection, if not by the direct [fol. 75] operation, of our laws. *Thomas v. Matthiessen*, 232 U. S. p. 235, 58 L. Ed., 577. To point out the various differences between the authorities cited and the instant case would only be a work of supererogation. The alpha and omega of every case must be determined by the facts. We cite the authorities chiefly relied upon by appellant, all of which have been carefully scrutinized: *Tyler v. Dane County*, 289 Fed., 843; *In Re McMullen's Estate*, 192 N. Y. Sup., 49; *In Re Harkness Estate*, 83 Okla., 107, 204 Pac., 911; *S. v. Dunlop*, 28 Idaho, 784, 56 Pac., 1141; *Welch v. Burrill*, 223 Mass., 87, 111 N. E., 774; *Oakman v. Small*, 282 Ill., 360, 118 N. E.,

775; *People v. Griffith*, 245 Ill., 532, 92 N. E., 313; *People v. Dennett*, 276 Ill., 43, 114 N. E., 493.

The cases of *S. v. Brim*, 57 N. C., 300, and *Evans v. Monot*, 57 N. C., 228, are not at variance with our present position.

There is still another ground upon which the authority of a state to levy an inheritance tax has been upheld, namely, the necessity of resorting to the courts of the state to enforce a right acquired from a non-resident decedent. In *Re Houdayer*, 150 N. Y., 37. Deposits in a bank belonging to a non-resident owner at the time of his death and debts due from a resident to the estate of a non-resident decedent may be subjected to an inheritance tax in the state of the debtor's residence, in the latter case or where the bank is located in the former, notwithstanding the established legal fiction that the situs of a debt is usually at the residence of the creditor, for it is ordinarily at the residence of the debtor, if at all, that the debt may be enforced. *Blackstone v. Miller*, 188 U. S., 189; *Bliss v. Bliss*, 221 Mass., 201; In *Re Rogers*, 149 Mich., 305. *Contra*: *Gilbertson v. Oliver*, 129 Ia., 568.

The rights incident to a share of stock in a corporation—to partake of the surplus profits of the corporation, and ultimately, on its dissolution, to participate in the distribution of its assets, after payment of its debts—can be maintained and enforced only in the jurisdiction where the property of the corporation is situated. True, these rights, in the instant case, might be asserted in the Federal Courts; but, in its final analysis the rights of the parties would be determined, in a measure at least, by the laws of North Carolina. [fol. 76] Speaking to a similar question in *Bliss v. Bliss*, 221 Mass., 201, it was said:

"The bonds could not be collected by any process in the courts except by invoking Massachusetts law."

But it is contended that if the present assessment be sustained, it will result in requiring the payment of two or three taxes of like character by the same legatees for the one right of succession to the property in question. This unfortunate situation, if it be true, cannot control the determination of the question presented, for such a condition frequently arises, and, while its presence always, induces most careful consideration on the part of the courts, it must be submitted to unless it can be avoided under settled rules relating to the subject, especially in the face of a positive declaration by the law-making department.

"Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts". *Missouri T. & K. Ry. Co. v. May*, 194 U. S., 267.

It is further suggested that the Legislature of 1923, realizing the hardship occasioned by situations like the present, has modified the provisions of the law now under consideration; but, if so, this cannot

avail the plaintiff in the instant case. The testator died 29 October, 1919, while the provisions of the 1919 statute were in full force and effect.

From the foregoing, we conclude (1) that the defendant and the State Tax Commission have properly construed Chap. 90, Public Laws, 1919, as imposing the tax now in question; and (2) that the said act is constitutional.

The judgment of the Superior Court will be upheld.

Affirmed.

[fol. 77]

Addendum

Since the argument of this case and the preparation of the opinion, our attention has been called to a decision of the Supreme Court of Wisconsin, *Shepard v. State and Shepard v. Harper*, Public Administrator, decided 12 February, 1924, in which the conclusions reached by the United States District Court in the case of *Tyler v. Dane County*, *supra*, are sanctioned and approved. There are certain fundamental differences which distinguish this case, as well as the other authorities cited by plaintiff, from the case at bar. In the first place, Wisconsin, for all purposes, unlike North Carolina for purposes of taxation, adheres to the doctrine of separate and distinct interests between the capital of a corporation and its capital stock. "Such has been and still is the settled law of this State and it is beyond the power of the court to alter it even if it so desired", says the Wisconsin court. For some purposes, this distinction is very important, especially in dealing with the relative rights, *inter se*, of the corporation and its share holders; but for purposes of taxation, think it is within the power of the Legislature to treat the prorata interest of a stockholder in the corporate property as identical with that of the corporation, or simply as a share in the corporate entity. *Person v. Watts*, 184 N. C., pp. 516 and 517. Such was the direct holding of this Court in *Park v. Express Co.*, 185 N. C., 428. To paraphrase the language of Chief Justice Clark in that case, appearing on p. 433, it may be said here: In the present case the R. J. Reynolds Tobacco Company, though incorporated in New Jersey, is doing business in this State and is subject to its jurisdiction. The shares of stock held by the decedent at the time of his death in that company was an obligation of the company to its stockholder. It was the "property of the stockholder in the hands of the company doing business here."

[fol. 78] The question as presented to us is not one of policy for the courts, but one of power for the Legislature. It is peculiarly the function of the law-making body to levy assessments and to devise a scheme of taxation. *Trust Co. v. McFall*, 128 Tenn., 645. In the second place, the R. J. Reynolds Tobacco Company has its principal place of business in this State, with two-thirds of the total value of its entire property located herein, and for all practical purposes, so far as the question of taxation is concerned, it stands on substantially the same footing as a domestic corporation. It is domesticated

here. Similar conditions were not presented in any of the cases cited and relied upon by appellant.

[fol. 79] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

JUDGMENT

This cause came on to be argued upon the transcript of the record from the Superior Court of Wake County:—upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is, therefore, considered and adjudged by the Court here, that the opinion of the Court, as delivered by the Honorable W. P. Stacy, Justice, be certified to the said Superior Court, to the intent that the judgment is affirmed. And it is considered and adjudged further, that the plaintiff Rhode Island Hospital Trust Company and surety to appeal bond do pay the costs of the appeal in this Court incurred, to-wit, the sum of Forty-nine 35/100 dollars (\$49.35), and execution issue therefor.

[fol. 80] IN SUPREME COURT OF NORTH CAROLINA

CLERK'S CERTIFICATE

I, Edward C. Seawell, Clerk of the Supreme Court of the State of North Carolina, do hereby certify the foregoing to be a full, true and correct copy of the proceedings in this Court in the cause entitled, Rhode Island Hospital Trust Co., executor of George Briggs, deceased, vs. Rufus A. Doughton, Commissioner of Revenue for the State of North Carolina.

Witness my hand and seal of said Court at office in Raleigh this 6 June 1924.

Edward C. Seawell, Clerk of the Supreme Court of the State of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

Endorsed on cover: File No. 30,436. North Carolina Supreme Court. Term No. 106. Rhode Island Hospital Trust Company, executor of George Briggs, deceased, plaintiff in error, vs. Rufus A. Doughton, Commissioner of Revenue of the State of North Carolina. Filed June 23, 1924. File No. 30,436.



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CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1925

No. 106

RHODE ISLAND HOSPITAL TRUST COMPANY,
EXECUTOR OF GEORGE BRIGGS, Deceased,
Plaintiff in Error

vs.

RUFUS A. DOUGHTON, *Commissioner of Revenue of the
State of North Carolina*

In Error to the Supreme Court of the State of North Carolina
BRIEF OF PLAINTIFF IN ERROR

JOHN M. ROBINSON,
WILLIAM R. TILLINGHAST,
JAMES C. COLLINS,
Attorneys for Plaintiff in Error.

COLIN MACR. MAKEPEACE,
of Counsel.

1870
The first of the year
was a very cold one
and the snow was
very deep.

The second of the year
was a very warm one
and the snow was
very shallow.

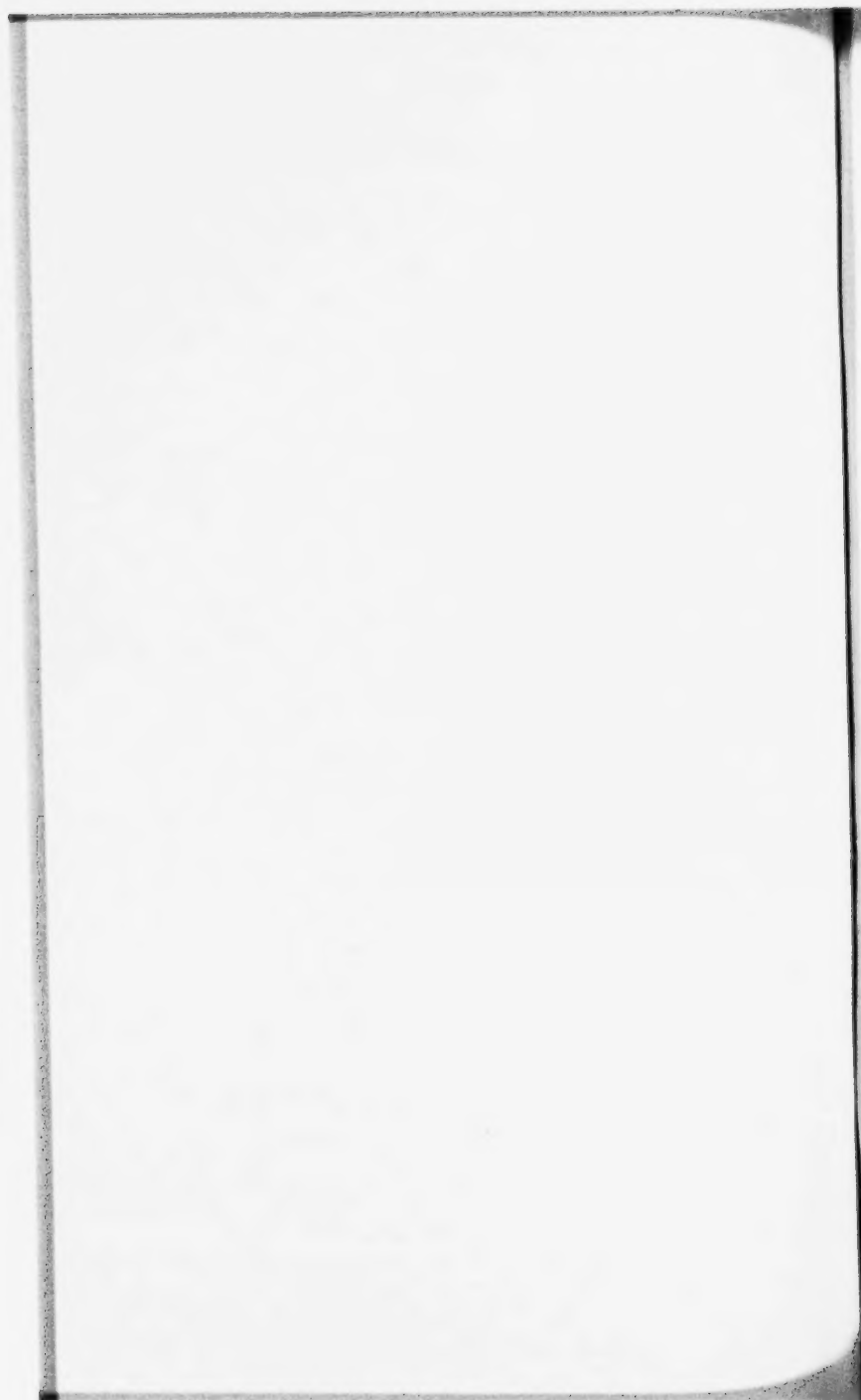
The third of the year
was a very cold one
and the snow was
very deep.

The fourth of the year
was a very warm one
and the snow was
very shallow.

The fifth of the year
was a very cold one
and the snow was
very deep.

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**In the
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OCTOBER TERM, 1925

No. 106

RHODE ISLAND HOSPITAL TRUST COMPANY,
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Plaintiff in Error

vs.

RUFUS A. DOUGHTON, *Commissioner of Revenue of the
State of North Carolina.*

In Error to the Supreme Court of the State of North Carolina
BRIEF OF PLAINTIFF IN ERROR

JOHN M. ROBINSON,
WILLIAM R. TILLINGHAST,
JAMES C. COLLINS,
Attorneys for Plaintiff in Error.

COLIN MACR. MAKEPEACE,
of Counsel.

STATEMENT OF FACTS

This case is here on writ of error to the Supreme Court of North Carolina, to test the levy of an inheritance tax upon the transfer of stock in a foreign corporation owned by a non-resident. The certificates of stock were at all times physically out of the state; the beneficiaries, receiving said stock under the will, were all non-residents; and the transfer of the stock took place out of the state.

The case has been tried upon an agreed statement of facts, which may be found in the Record, beginning at page 22. We recite the following:

(1) George Briggs, the intestate, was a resident of, and domiciled in, the State of Rhode Island, at the time of his death, October 29, 1919, and had never resided in the State of North Carolina (Record, 22).

(2) The plaintiff herein, Rhode Island Hospital Trust Company, was appointed executor of the last will and testament of said Briggs, and duly qualified as such before the Municipal Court of the City of Providence, Rhode Island, on November 25, 1919 (Record, 22).

(3) Among other property devised or bequeathed by said will was stock in the R. J. Reynolds Tobacco Company (hereinafter called the Tobacco Company), valued at the time of the testator's death at \$114,100.00, and dividends earned in the same company, represented by dividend scrip issued to him, to the amount of \$1,534.40 in value at the time of his death (Record, 22).

(4) The Tobacco Company is now, and at all times mentioned has been, a corporation created under the laws of the State of New Jersey (Record, 22).

(5) The stock books of the Tobacco Company are located in the City and State of New York, where its shares of stock are transferred by the Equitable Trust Company, its transfer agent (Record, top p. 20).

(6) The charter of the Tobacco Company states: "The location and principal office of such corporation in the State of New Jersey is at No. 765 Broad Street, in the City of Newark, in the County of Essex" (Record, 24).

(7) None of the certificates of stock in question were in the State of North Carolina, at the time of the testator's death, and never had been during the time they were owned by said testator (Record, 32).

(8) None of the recipients of said stock under the will were, or ever had been, citizens or residents of the State of North Carolina (Record, 32).

(9) Two-thirds in value of the property of said Tobacco Company is located in or near the City of Winston-Salem, North Carolina (Record, 32).

(10) Before a foreign corporation is permitted to do business in the State of North Carolina it must comply with the provisions of section 1181 of the Consolidated Statutes of the State, formerly section 1194 of the Revisal. A copy of this section will be found in the appendix to this brief at page 25. It simply contains the customary provisions in reference to filing a copy of the charter, filing a statement showing the authorized and issued capital stock, the principal office in the state, the name of the agent in charge thereof, the character

of business transacted, and the names and addresses of the officers and directors of the corporation.

(11) For the purpose of obtaining permission to do business in the State of North Carolina the Tobacco Company, on or about August 14, 1906, complied with the provisions of said section 1181 Consolidated Statutes (Record, 22), and duly obtained a certificate granting to it authority to transact business in the State of North Carolina (Record, 27).

(12) Thereafter the Tobacco Company annually paid the license tax required of foreign corporations to do business in North Carolina, accompanied by the requisite annual report (Record, 27).

(13) The tax in the present case was levied under chapter 90, Public Laws of 1919 of North Carolina (now section 7767 *et seq* of Consolidated Statutes). The statute undertakes to impose an inheritance tax upon the transfer of all real and personal property of every kind and description, and "such property or any part thereof or interest therein within this State" which shall pass by will or by operation of law from a testator to his legatees or devisees, or from an intestate to his heirs or distributees; and section 6, in part, provides:

"The words, 'such property or any part thereof or interest therein within this State,' shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other State or country, when such incorporated company is the owner of property in this State, and if 50 per cent. or more of its property is located in this State, and when bonds or shares of stock in such company not incorporated in this State, and

owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed, shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such company, and the exemptions allowed shall be the proportion of exemption allowed by this act, as related to the total value of the property of the decedent."

PROCEEDINGS BELOW

In performance of its duty as executor under the will of said Briggs, the plaintiff requested that the Tobacco Company transfer said stock to it. The Company replied that the transfer could not be made until the inheritance tax on said stock due to the State of North Carolina was paid, or waived by the Department of Revenue (Record, 16, 18).

The plaintiff then requested the Department of Revenue to waive the tax in order that said stock certificates could be transferred, and the estate of said Briggs could be settled (Record, 5). This request for a waiver was denied and the plaintiff was informed that an inheritance tax of twenty-six hundred fifty-eight and eighty-five one hundredths (\$2,658.85) dollars would have to be paid before the certificates of stock could be transferred (Record, 12).

If the Tobacco Company had transferred the certificates without the waiver it would have been liable

for the tax as section 6 (sub-section 7), of the act in question provided:

"Any incorporated company not incorporated in this State and owning property in this State which shall transfer on its books the bonds or shares of stock of any decedent holder of shares of stock in such company exceeding in par value five hundred dollars, before the inheritance tax, if any, has been paid, shall become liable for the payment of said tax, and any property held by such company, in this State shall be subject to execution to satisfy same. A receipt or waiver signed by the State Tax Commission of North Carolina shall be full protection for any such company in the transfer of any such stock or bonds."

The plaintiff duly gave notice of appeal from the above ruling of the Commissioner to the Superior Court of Wake County (Record, 13), in accordance with procedure outlined in a state statute, allowing such appeals.

The plaintiff, also acting under a relevant state statute, paid said tax under protest and brought an action to recover it. We do not set forth copies of the state statutes mentioned in this and the preceding paragraph as it is not denied that the plaintiff adopted the correct procedure for the protection of its rights. In fact, the following statement appears in the Record at page 19:

"It is admitted that if the statute imposing the inheritance tax in this instance is unconstitutional, the plaintiff is entitled to judgment against the defendant for \$2,658.85, with interest and costs."

In the Superior Court of Wake County, upon consent of the parties, the appeal from the Commissioner and the action instituted by the plaintiff were consolidated (Record, 21), and, as heretofore stated, this consolidated action was then tried upon an agreed statement of facts (Record, 22). A judgment was rendered therein sustaining the validity of the statute, as applied to the plaintiff, and upholding the assessment of the Commissioner (Record, 35).

From the judgment so rendered the plaintiff appealed to the Supreme Court of North Carolina, where said judgment was affirmed, Chief Justice Clark dissenting (187 N. C., 263). From the decision so rendered this writ of error was prosecuted.

FEDERAL QUESTION INVOLVED

There can be no doubt about the fact that the plaintiff at all times insisted upon its rights under the Federal Constitution. At every step in both proceedings below the plaintiff contended that the state statute, under which the inheritance tax was levied, was in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and that an enforcement of said assessment and a collection of said tax would deprive the plaintiff of property without due process of law in violation of Section 1 of the Fourteenth Amendment of the Federal Constitution, which was expressly set up and relied upon (Record, 14, 17).

The opinion of the Supreme Court also states:

“Plaintiff’s next position is, that if the law is to be construed so as to authorize an imposi-

tion of the tax in question, then the statute is unconstitutional, both under Article I, section 17, of the State Constitution, and also under the Fourteenth Amendment to the Constitution of the United States."

ARGUMENT

The State Supreme Court, in its opinion herein, says: "It is clear, we think, from the language used, that the Legislature intended to levy the tax imposed and which is sought to be recovered in this suit." The Court then proceeds to the question as to whether or not the state statute, as thus construed and applied, violates the Federal Constitution; and, as above stated, this question is answered in the negative.

I

THE SHARES OF STOCK IN THE TOBACCO COMPANY WERE NOT PROPERTY WITHIN THE STATE OF NORTH CAROLINA

For the sake of clarity, we here repeat that:

(a) George Briggs, the owner of the stock, was a non-resident of the State of North Carolina.

(b) The Tobacco Company was a foreign corporation.

(c) The actual certificates of stock were at all times physically outside the State of North Carolina.

Upon these admitted facts, it would seem too clear for argument that the stock in question was not, in any

sense, property within the taxing state. The fact that the corporation itself owned property in the state is, of course, beside the question.

The distinction between the ownership of shares of stock in a corporation and ownership of the property of the corporation is a fundamental concept of the law of corporations. This distinction has heretofore been fully recognized by the law of North Carolina. In *Pullen vs. Corporation Commission*, 152 N. C., 553, the Court said:

"It is likewise well settled by the language of our state Constitution, by many decisions of this court, and of the Supreme Court of the United States, and now generally accepted law, that the property of a shareholder of a corporation in its shares of stock is a separate and distinct species of property from the property, whether real, personal or mixed, held and owned by the corporation itself as a legal entity. It would be useless to cite authority to support a proposition so well established and generally accepted."

In the instant case the above quotation is set forth in the dissenting opinion of Chief Justice Clark, who adds: "Therefore it follows that the decedent as a shareholder in the Reynolds Company had no property here and we can neither tax it nor its devolution."

The same learned judge in his dissent herein, says: "It is therefore inexplicable how the state has jurisdiction to tax the property of the estate of this decedent who resided in Rhode Island and had no property here, or tax its devolution by the laws of the domicile of the owner over which this state can have no control."

See *supra* at 38 *Harvard Law Review* at page 333.

"Whether under the Decedent shareholder or the corporation on whose shares it is deemed to be a succession one is domiciled with in the state, collectors and legislators brought jurisdiction in the present within the state of property owned by such corporation. Since, however, the property belongs to the corporation, not to the shareholder or his successor, both before and after the shareholder's death, and with the intangible interest in the corporation represented by the shares has changed hands, no transfer has taken place which depends for its validity in any way upon the laws of the state in which the property lies, and there is consequently no jurisdiction in me. The entire case therefore almost unanimously overruled these attempts to have rights determined either that the state in question did not sufficiently manifest any such intention in relation to the part of the legislature, or that if it did it was so manifestly contrary to the corporate will as to be unconstitutional."

See 38 *Harvard Law Review* at page 333. Professor Dwight D. Davis, after referring to decisions in several cases, says:

"In *Scott v. Cavell*, however, the matter has been held by the *Michigan Supreme Court* (1892) that in *Boyd v. The State*, the Court allowed that the state of a non-resident decedent under a statute imposing an inheritance tax must hold it as a foreign corporation based on the property owned within of the corporate property within

the state where the majority of its property was within the state. The decision was based upon the convenient principle of designating the corporate location, that is, assuming that the decedent owned property within the state which was transferred to his heirs although in fact he owned no property within the state and his death transferred no title to property located outside.

On a matter of fact, the decision in the instant case seems to stand alone. It is contrary to the holding in the following cases:

- Shaw vs. Shaw-Cumby*, 280 (Iowa, 1941)
- Shaw vs. Shoup*, 28 (Iowa, 1934)
- Boyle vs. Bennett*, 276 (Ill., 41)
- Wichman, Howell*, 223 (Miss., 35)
- Smith vs. Walker*, 222 (Iowa, 1934)
- Howe, McMillen's Estate*, 192 (N. J., 34)
- Wrightman's Estate*, 107 (N. Y., 35), 122

The court has declared that the property of the shareholders in their respective shares is distinct from the corporate property, franchise and capital stock.

- Hansen vs. Hildebrand*, 222 (N. J., 1934)
- Hansen vs. Hildebrand*, 222 (N. J., 34)

Furthermore, in the *Wichman* case, it was stated: "It is well settled that the property of the shareholders in their respective shares is distinct from the corporate property, franchise and capital stock, and may be separately taxed (being assets); and the ruling in the case cited in this case does not proceed upon the view that shares are personal property, and having no situs, therefore, are taxable in the state of the owner's domicile, whether the corporation is foreign or domestic."

We submit that the stock in question could not, in any sense, be properly regarded as property in North Carolina. The owner was not a resident. The corporation was a New Jersey one. The certificates themselves were physically out of the state. Any transfer of said certificates must have been effected out of the state. There is no contention, we assume, that the state could have exercised any control over the transfer of said stock from one owner to the other. Nor have we heard it contended that the stock, prior to the decedent's death, was subject to an *ad valorem* tax in North Carolina. In other words, that state had no jurisdiction over the property itself or the transition thereof.

The state Supreme Court, in an addendum to the principal opinion, after saying that the question presented simply involved the power of the Legislature, stated: "For the purposes of taxation, we think it is within the power of the Legislature to treat the pro rata interest of a stockholder in the corporate property as identical with that of the corporation, or simply as a share in the corporate entity."

This, we submit, simply amounts to saying that the Legislature, in order to authorize the collection of a tax on subjects beyond the state, may disregard fundamental principles and treat property actually belonging to one person as really belongs to another.

Even if the State of North Carolina, through its Legislature and Courts, could thus sweep aside the corporate entity in dealing with the relationship of stockholders to the property of a domestic corporation, we submit that it could not do so when dealing with the relationship of stockholders in a foreign corporation. The Tobacco Company is a corporation of New Jersey.

Hence the relation of the stockholders to the corporate property is determined by the law of that state and can not be changed by the State of North Carolina.

Supreme Council vs. Green, 237 U. S., 531.
Canada, Etc., R. R. vs. Gebhard, 109 U. S.,
529.

As stated in the Gebhard Case:

"A corporation 'must dwell in the place of its creation, and cannot migrate to another sovereignty' (*Bank vs. Earle*, 13 Pet., 578), though it may do business in all places when its charter allows and the local laws do not forbid. *R. R. Company vs. Koontz*, 104 U. S., 12. But wherever it goes for business it carries its charter, as that is the law of its existence."

Inasmuch as the State of North Carolina did not grant the charter of the Tobacco Company, we submit that it cannot sweep it aside.

In the Green Case, *supra*, Chief Justice White, in speaking of the rights of a corporation organized in the State of Massachusetts, said:

"Moreover, as the charter was a Massachusetts charter, and the constitution and by-laws were a part thereof, adopted in Massachusetts, having no other sanction than the laws of that state, it follows by the same token that those laws were integrally and necessarily the criterion to be resorted to for the purpose of ascertaining the significance of the constitution and by-laws."

Of course, in the absence of evidence to the contrary, it is presumed that the relation of a stockholder to the corporate property is fixed by the State of New Jersey in accordance with the rules of the common Law, unaffected by statute.

Miller vs. Railroad, 154 N. C., 441.
Roberts vs. Pratt, 152 N. C., 731.

II

THE STATE OF NORTH CAROLINA WAS WITHOUT POWER TO IMPOSE THE TAX IN QUESTION AND ITS ATTEMPT TO DO SO DEPRIVED PLAINTIFF OF ITS ASSERTED FEDERAL RIGHTS.

From the admitted facts it is seen that the taxing state had no jurisdiction over the owner, or the property, or the transfer of said property. Consequently it had no power to collect the tax in question. Nor does it change the situation to say, as did the North Carolina Supreme Court, that the tax is "not upon the property itself, but upon its transfer, change of ownership or devolution."

For this Court in the recent case of *Frick vs. Commonwealth of Pennsylvania*, U. S., in speaking of the inheritance tax law of Pennsylvania, said:

"The tax which it imposes is not a property tax but one laid on the transfer of property on the death of the owner. This distinction is stressed by counsel for the State. But to impose either tax the State must have jurisdiction over the thing that is taxed, and to impose

either without such jurisdiction is mere extortion and in contravention of due process of law."

We quote the following from the dissenting opinion of Chief Justice Clark in the case at bar:

"As the devolution of the shares of stock in the R. J. Reynolds Company belonging to the decedent Briggs passed by operation of the laws of the state where he died domiciled, and the persons to whom it should pass by operation of law or the power to convey it by will is solely under the control of the State of Rhode Island, it is difficult to see what authority North Carolina has to tax such devolution or interfere with it in any way. If this state could tax the right of devolution at all, it could tax it 100 per cent., for there is no provision in the Constitution which limits the amount of inheritance tax."

It is, of course, elementary that the power of a state to tax is limited to persons, property and business within its domain.

State Tax on Foreign-Held Bonds, 82 U. S., 300.

Coe vs. Errol, 116 U. S., 517.

Dacey vs. Des Moines, 173 U. S., 193.

Bristol vs. Washington County, 177 U. S., 133.

Chief Justice Marshall, in characteristic virile language, says:

"All subjects over which the sovereign power of a state extends are objects of taxation;

but those over which it does not extend are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident." *McCulloch vs. Maryland* (1819), 4 Wheat (U. S.), 316, 429.

In 1872 in *State Tax on Foreign-Held Bonds, supra*, Mr. Justice Field expresses the thought on page 319 in the following:

"Property lying beyond the jurisdiction of the state is not a subject upon which her taxing power can be legitimately exercised. Indeed, it would seem that no adjudication would be necessary to establish so obvious a proposition.

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State."

Mr. Justice Harlan stated that:

"While the mode, form and extent of taxation are, speaking generally, limited only by the wisdom of the legislature, that power is limited by a principle inhering in the very nature of constitutional government, namely, that the taxation imposed must have relation to a subject within the jurisdiction of the taxing government." *Louisville & Jeffersonville Ferry Co. vs. Kentucky* (1903), 188 U. S., 385, 306, 47 L. Ed., 513, 518.

As stated by the Court in *Tyler vs. Dane County*, 289 Fed., 843, *supra*:

"No escape is seen from the conclusion that the tax here involved may not be justified on the theory that the transfer taxed was of an interest in property located in Wisconsin. On the contrary, the transfer was of distinct, though intangible, personal property transferred by universal succession from the decedent in Massachusetts to the complainants as executors appointed and resident in that state. . . . The transfer of the stock in question from the decedent to these complainants is effected by the laws of Massachusetts, and may be completed with the aid of the laws of those states which created the corporations, and it is apparent that such transfer receives no support, legal or otherwise, from the laws of Wisconsin."

Chief Justice Vinje, in discussing the application of the Wisconsin inheritance tax to a similar state of facts, said in the recent case of *Shepard vs. State*, 197 N. W., 344:

"The state must have jurisdiction of the subject-matter of the tax. Such subject-matter is the transfer of title to property from a decedent to another. If the state has nothing to do with such transfer it has no jurisdiction to impose an inheritance tax. Its right to impose (an inheritance) tax springs from its right to prescribe reasonable conditions for permitting and making the transfer. . . . But if the decedent was not a resident of the state at the time of his death and the person receiving it is a non-resident and the property to be transferred is without the state, then there is

no right to tax because the subject-matter is beyond the jurisdiction of the court. Either the property transferred must be within the state or the decedent must have died a resident thereof, or some recourse to the courts or laws of our state must be necessary to secure the transfer in order to confer jurisdiction to impose a valid tax."

In dealing with a similar situation, the Supreme Court of Massachusetts, speaking through Chief Justice Rugg, said in *Welch vs. Burrell*, 223 Mass., 87:

"Jurisdiction for the purpose of imposing a succession tax exists only when the exercise of some essential incident in the transfer of the title depends for its legality upon the law of the state levying the tax (citing cases). *Situs* of the shares of stock within the taxing state is the foundation of jurisdiction to tax. That *situs* ordinarily can be only at the domicile of the owner or at the domicile of the corporation (citing cases). . . . Jurisdiction is a matter of power over the particular *res* or subject. *Lamar vs. United States*, 240 U. S., 60. . . . The circumstance that there is property of the corporation in Michigan does not confer jurisdiction upon that state to impose a tax on the succession to the shares of stock of the corporation. That property does not in any direct sense belong to the shareholders. The full and complete legal title to it is in the corporation. It is impossible to predicate jurisdiction over non-resident shareholders in a foreign corporation merely upon the physical presence of property

belonging to that corporation within the territory of a state."

The correctness of our position is demonstrated by the fact that the title to, and ownership of, the property in North Carolina were absolutely unaffected by the death of Mr. Briggs. Before his death the title to said property was in the Tobacco Company. After his death it remained the same. No title to, or interest in, this property was transferred upon his death. That property was held in exactly the same way after his death as before. True the certificates of stock were transferred, but, as above seen, they were entirely separate and distinct from the North Carolina property.

III

THE FACT THAT THE TOBACCO COMPANY COMPLIED WITH THE STATE STATUTE IN ORDER TO DO BUSINESS THEREIN CONFERRED NO AUTHORITY ON THE STATE TO IMPOSE THE TAX IN QUESTION.

The State Supreme Court, in its opinion herein, repeats the fact that the Tobacco Company, in order to do business in the State, had complied with the provisions of section 1181 of the Consolidated Statutes (copied in the appendix hereto).

A reading of that section, however, will show that it contains no provision to the effect that a corporation, upon complying with its requirements, becomes, in any respect, a North Carolina corporation. On the contrary the section expressly provides that a corporation which has complied with its provisions may thereafter "withdraw" from the state in a prescribed manner, which is, of course, wholly inconsistent with the view

that compliance makes it a corporation of North Carolina.

Indeed it is not clear exactly what effect such compliance was given by the State Supreme Court. The opinion below did not hold that a compliance with the Statute made the Tobacco Company in any way a North Carolina corporation. The opinion simply repeats several times that the corporation "is domesticated here," without attempting to show how such fact is related to the question in hand.

Formerly there were two sorts of statutes in the case of admission of foreign corporations to do business in a state—one making it a domestic corporation, and the other merely giving the foreign corporation, as such, permission to do business in the State.

Chapter 62 of the Public Laws of the North Carolina Assembly of 1899 was an example of the first kind of statute mentioned. It expressly provided that a foreign corporation, upon complying with its terms, became a domestic corporation. This statute was considered in the case of *Southern Railway Company vs. Allison*, 190 U. S., 326, wherein it was decided that a foreign corporation, which had complied with the statute, did not thereby lose its right to remove to the Federal Court an action brought against it by a resident of North Carolina.

Since the decision of this Court in the Allison Case, there has been dropped from the section in question the provision to the effect that a foreign corporation, upon complying with its terms became a domestic corporation. Hence there is now no room whatever for the contention that it does become such.

In *Pennsylvania Railroad Company vs. Railroad*, 118 U. S., 290, the Court said:

"It does not seem to admit of question that a corporation of one State, owning property and doing business in another State by permission of the latter, does not thereby become a citizen of this State also. . . . To make such a company a corporation of another State, the language used must imply creation or adoption in such form as to confer the power usually exercised over corporations by the State, or by the legislature, and such allegiance as a State corporation owes to its creator. The mere grant of privileges or powers to it as an existing corporation, without more, does not do this, and does not make it a citizen of the State conferring such powers."

It will, of course, be noted that the state statute (C. S., 1181) does not purport to deal with the stockholders or their liabilities. It does not purport to change the common law relation of a stockholder to the corporate property. The provisions of the statute operate directly upon the corporation itself, without attempting to reach beyond it.

It is true that a state may impose valid conditions upon a foreign corporation seeking to enter its borders to transact business. But we submit that, even if it attempted to do so, it could not impose the condition that stock in such corporation, held outside the state by a non-resident, should be subject to its inheritance tax.

In speaking of this question the Supreme Court of Wisconsin said in *Shepard vs. State*, 197 N. W., at page 347:

"The other statute relied upon by the Attorney General is Section 226.02, Stats., 1923, formerly section 1770-b, prescribing the conditions upon which foreign corporations may do business in this state. The argument is that by accepting the conditions of that section they have agreed to obey and abide by our laws, and therefore cannot question their validity. Assuming, but not deciding, that a corporation can bind its stockholders, no lengthy discussion is necessary to refute the fallacy of this claim. The foreign corporations by agreeing to abide by the conditions of section 226.02 agree to abide by and obey our valid laws, not our void and unconstitutional laws. If we required them to do the latter, the Federal Supreme Court would speedily say we could not lawfully do so. *Terrill vs. Burke Const. Co.*, 257 U. S., 529, 42 Sup. Ct., 188, 66 L. Ed., 352, 21 A. L. R., 186. It there held that a state cannot exact as a condition for doing business within the state obedience to a state law that is repugnant to constitutional provisions. This court has frequently said that an unconstitutional law is no law at all. It has no force or efficacy, and cannot be obeyed. The argument that since the tax upon non-residents is the same as upon residents the law is therefore a valid and fair one is of no weight, because the fact that an illegal tax upon a non-resident is no greater than a legal tax upon a resident does not justify the former. Were such an argument a valid one, we could tax the whole world."

In *Tyler vs. Dane County*, *supra*, the Court reached the same conclusion. After citing *Looney vs. Crane*, 245 U. S., 178, *International Paper Company vs. Massachusetts*, 246 U. S., 135, and *Terrall vs. Burke*, 257 U. S., 529, for the proposition that a state may not tax a foreign corporation as to its property outside the confines of the state, even under the guise of a privilege or franchise tax, imposed apparently as a condition of admission into the state, the Court said:

"If a corporation may not be taxed on its own property located outside the state as a condition for doing business within it, it would seem to follow logically that it may not be required to bring with it into the state, for succession purposes, property of third persons, to-wit, shares in its stock belonging to its non-resident stockholders. The latter proposition involves an extension of the state's power at least one step beyond that involved in the former. Viewed from this angle, I am of the opinion that the *situs* of the stock transferred to the plaintiffs was not validly changed to Wisconsin."

CONCLUSIONS

We submit that this case simply presents an illustration of the part of the State to be taken, although the questions in question and the parties in interest are all within its borders. If this be true, then necessarily the rights of the constitutional rights and must fall.

Respectfully submitted:

JOHN M. ROBINSON

WILLIAM B. THOMPSON

JOHN M. ROBINSON

THOMPSON & THOMPSON, ATTORNEYS

hundred dollars, to be recovered, with costs, in an action to be prosecuted by the attorney-general, who shall prosecute such actions whenever it appears that this section has been violated. This section does not apply to railroad, banking, express or telegraph companies which, prior to March 9, 1915, had been licensed to do business in this state, or were engaged in business in this state, having a regularly appointed agent upon whom service of process could be made, located in this state.



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**In the
Supreme Court of the United States**

OCTOBER TERM, 1925

No. 106

RHODE ISLAND HOSPITAL TRUST COMPANY,
EXECUTOR OF GEORGE BRIGGS, DECEASED,
Plaintiff in Error

vs.

RUFUS A. DOUGHTON, *Commissioner of Revenue of
the State of North Carolina*

**In Error to the Supreme Court' of the State
of North Carolina**

REPLY BRIEF OF PLAINTIFF IN ERROR

JOHN M. ROBINSON,
WILLIAM R. TILLINGHAST,
JAMES C. COLLINS,
Attorneys for Plaintiff in Error.

COLIN MACR. MAKEPEACE,
of Counsel.

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JAMES C. COLLINS,
Attorneys for Plaintiff in Error.

COLIN MACR. MAKEPEACE,
of Counsel.

I

R. J. REYNOLDS TOBACCO COMPANY NOT A NORTH CAROLINA CORPORATION

We are at a loss to understand why the defendant in error, at the bottom of page one of its brief, states that the R. J. Reynolds Tobacco Company "had also been incorporated in North Carolina, February 27th, 1899," and why, as an appendix to its brief, it attaches a copy of chapter 109 of the Private Laws of 1899.

Surely it does not desire to create the impression that the Tobacco Company is a North Carolina corporation. As a matter of fact, the present case has been tried upon an agreed statement of facts, which will be found in the record, beginning at page 22. In this agreed statement it is expressly stipulated: "The R. J. Reynolds Tobacco Company (hereinafter for brevity called the Tobacco Company), is a corporation created under the laws of the State of New Jersey and is now, and has at all times named been a corporation of the State of New Jersey" (Record, 22).

From the very beginning of the present controversy the Tobacco Company has been treated by all parties as a corporation of New Jersey and a non-resident of North Carolina. It was so treated in the trial court, and so dealt with by the Supreme Court of North Carolina.

It would seem, therefore, that the defendant in error, in making the statement above quoted, and in attaching the appendix to its brief, has departed from the record. In order to meet this rather unusual situation, it has been necessary for us to obtain an affidavit from the Tobacco Company, a copy of which is attached as an appendix to this brief.

From that affidavit it will be seen that chapter 109 of the Private Laws of 1899, copied in the appendix to the brief of the defendant in error, is entirely obsolete; that in the year 1899 a charter was obtained from the State of New Jersey and the R. J. Reynolds Tobacco Company was organized thereunder; and that the New Jersey corporation thus formed is the one which owns the property and operates the business in North Carolina. The affidavit states: "That the organization of the corporation was not perfected under Chapter 109, Private Laws of North Carolina 1899, because of the fact that shortly after the passage of said act, the organization under the New Jersey charter hereinbefore referred to, was effected." The affidavit states further that: "The entire property is now owned, and the business conducted, solely under the New Jersey charter; that said R. J. Reynolds Tobacco Company operates in the State of North Carolina as a New Jersey corporation solely, and that its entire stock is issued in said New Jersey corporation."

We respectfully submit, therefore, that the statement referred to in the brief of the defendant in error, and the appendix thereto, tends only to confuse

the clear-cut question before the court in this case. Indeed, the defendant in error, after attaching a copy of said Private Act to its brief, does not again refer to it but proceeds to argue the case as if the Tobacco Company were a New Jersey corporation.

II

THE CORPORATE ENTITY SHOULD NOT BE DISREGARDED

The defendant in error, in a strenuous effort to uphold the present tax, insists that the State Legislature had the power to disregard the "corporate fiction."

It is, of course, true that, in exceptional cases, the Court will disregard the corporate entity. This, however, as we understand it, is resorted to in order to prevent injustice or to circumvent manifest fraud. Surely no such case is presented by the present record; for it has never been contended that the Tobacco Company is using its corporate entity as a cloak for fraud, or as a means of wrong-doing in any way. On the contrary, the record shows that it began business in North Carolina, as a foreign corporation, long before the Act in question was ever contemplated. Our research has failed to disclose a single case wherein the corporate entity has been disregarded in order to support a tax for which the corporation admittedly is not liable.

If a state may utterly disregard the entity of a foreign corporation, owning property within its borders, solely for the purpose of collecting taxes out of non-resident stockholders of the corporation, it may disregard that entity for any and all purposes. We can think of no limit to such a doctrine. We submit that it would not only be contrary to fundamental conceptions, but that it would lead inevitably to chaos.

We submit that power to punish cannot be used as a substitute for jurisdiction to tax. The fact that the State of North Carolina has the power to punish the Tobacco Company for transferring the stock before payment of the tax, by taking property of the company located in the state, does not confer jurisdiction.

The vital fact in the case is that the decedent Briggs, owned no property within the taxing state. He had no right to segregate to himself a square inch of the land, a brick of the buildings, a dollar in the bank, or a single package of cigarettes. All the property within the taxing state was owned solely by the corporation—both before and after the death of Briggs.

In the recent case of *State vs. Walker*, 226 Pac., 894, the Supreme Court of Montana, in commenting upon the decision in the instant case said:

“The general principles of law announced in the majority opinion of the Supreme Court of North Carolina in the very recent case of *Rhode Island Hospital Trust Co. vs. Doughton*, 121

S. E., 741, gives recognition to all of the well-established rules of law applicable in the levy of a succession or inheritance tax, and then holds that since the corporation is possessed of property within the territorial confines of North Carolina, the shareholder has an interest in the property represented by his shares of stock sufficient to confer jurisdiction upon the State of North Carolina to impose a succession tax. It is said in the majority opinion:

“We think, that the Legislature intended to put aside the fiction of separate interests between the corporation and its shareholders and to impose an inheritance tax upon the transfer by will or devolution of the interests of non-resident stockholders in corporations, chartered in any other state or country.’

“The decision in that case is illogical in conclusion, and contrary to the overwhelming weight of authority. We refuse to follow it.”

III

THE ECONOMIC POLICY PURSUED BY THE STATE OF NORTH CAROLINA CANNOT DEPRIVE THE PLAINTIFF IN ERROR OF ITS FEDERAL RIGHTS

The defendant in error, in its brief, emphasizes the fact that it has been the state policy, in levying *ad valorem* taxes, to tax the property of the corpora-

tion and not the individual shares of stock therein. Certainly this was not disregarding the corporate entity.

At any rate, we are at a loss to understand how this policy could affect the Federal rights of the present plaintiff in error. Neither Briggs nor the plaintiff ever took any benefit under the economic policy of the State of North Carolina, pursued by it in levying *ad valorem* taxes.

The case of *Person vs. Watts*, 184 N. C., 499, strenuously relied upon by our opponents, involved simply a construction of a clause of the state constitution relating to *ad valorem* taxes. All parties were residents of North Carolina. No rights under the Federal Constitution were involved.

In conclusion, we repeat that no property was owned or transferred within, or by virtue of the laws of, the State of North Carolina. Hence there was, we submit, no jurisdiction to tax.

Respectfully submitted,

JOHN M. ROBINSON,

WILLIAM R. TILLINGHAST,

JAMES C. COLLINS,

Attorneys for Plaintiff in Error.

COLIN MACR. MAKEPEACE,
of Counsel.

EXHIBIT A

NORTH CAROLINA,
FORSYTH COUNTY.

S. CLAY WILLIAMS, being first duly sworn, deposes and says: that he is an officer of R. J. Reynolds Tobacco Company, to-wit: one of its Vice-Presidents. Affiant further states, upon information obtained by him from records and other reliable sources, that for a number of years beginning about the year 1875, Mr. R. J. Reynolds, individually, conducted the business which was later taken over as hereinafter set forth; that about the year 1888 he took into partnership with him certain other gentlemen and continued to operate said business as a partnership until about 1890; that, in the year 1890, a charter was obtained from the State of North Carolina and R. J. Reynolds Tobacco Company was organized thereunder; that the corporation thus formed took over said partnership business of R. J. Reynolds & Company; that said business was operated under the North Carolina charter until the year 1899; that, during the year 1899, a charter for the R. J. Reynolds Tobacco Company was procured in the State of New Jersey; that the corporation was duly organized and perfected under said charter and the entire business and property was transferred to said New Jersey corporation, and the North Carolina corporation was immediately dissolved: that since that time the entire property has

been owned and the entire business has been conducted solely under the charter issued by the State of New Jersey in the year 1899; that the organization of the corporation was not perfected under Chapter 109, Private Laws of North Carolina 1899, because of the fact that shortly after the passage of said Act the organization under the New Jersey charter hereinbefore referred to was effected.

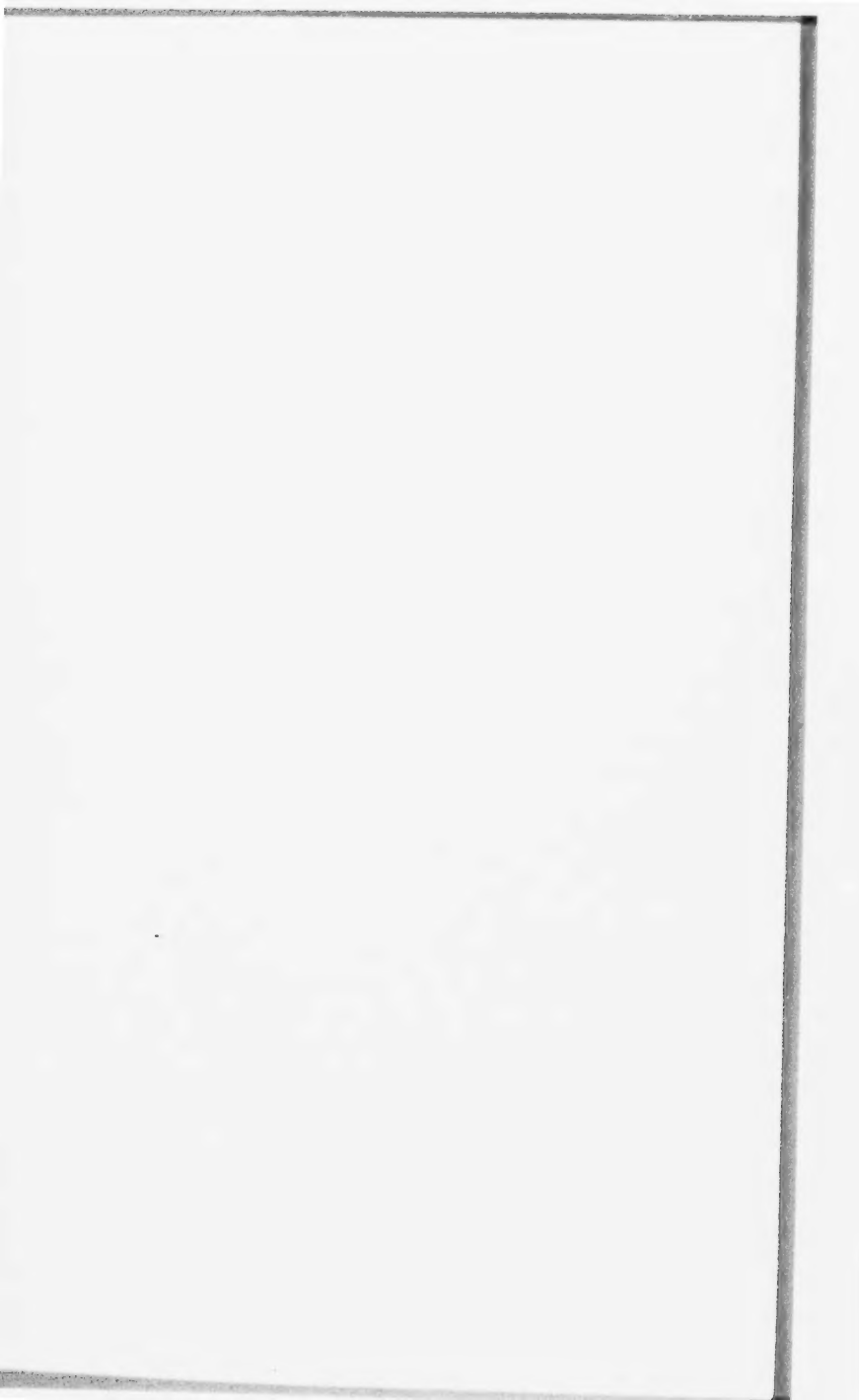
Affiant further states that, as hereinbefore set forth, the entire property is now owned and the business conducted solely under the New Jersey charter; that said R. J. Reynolds Tobacco Company operates in the State of North Carolina as a New Jersey corporation solely and that its entire stock is issued in said New Jersey corporation.

S. CLAY WILLIAMS.

Subscribed and sworn to before me this the 6th day of November, 1925.

M. P. TRAYNOR,
Notary Public.

My Commission Expires August 11, 1927.



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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1925

No. 106

RHODE ISLAND HOSPITAL TRUST COMPANY,

Executor of George Briggs, Deceased,

Plaintiff in Error,

v.

RUFUS A. DOUGHTON, Commissioner of Revenue

of the State of North Carolina,

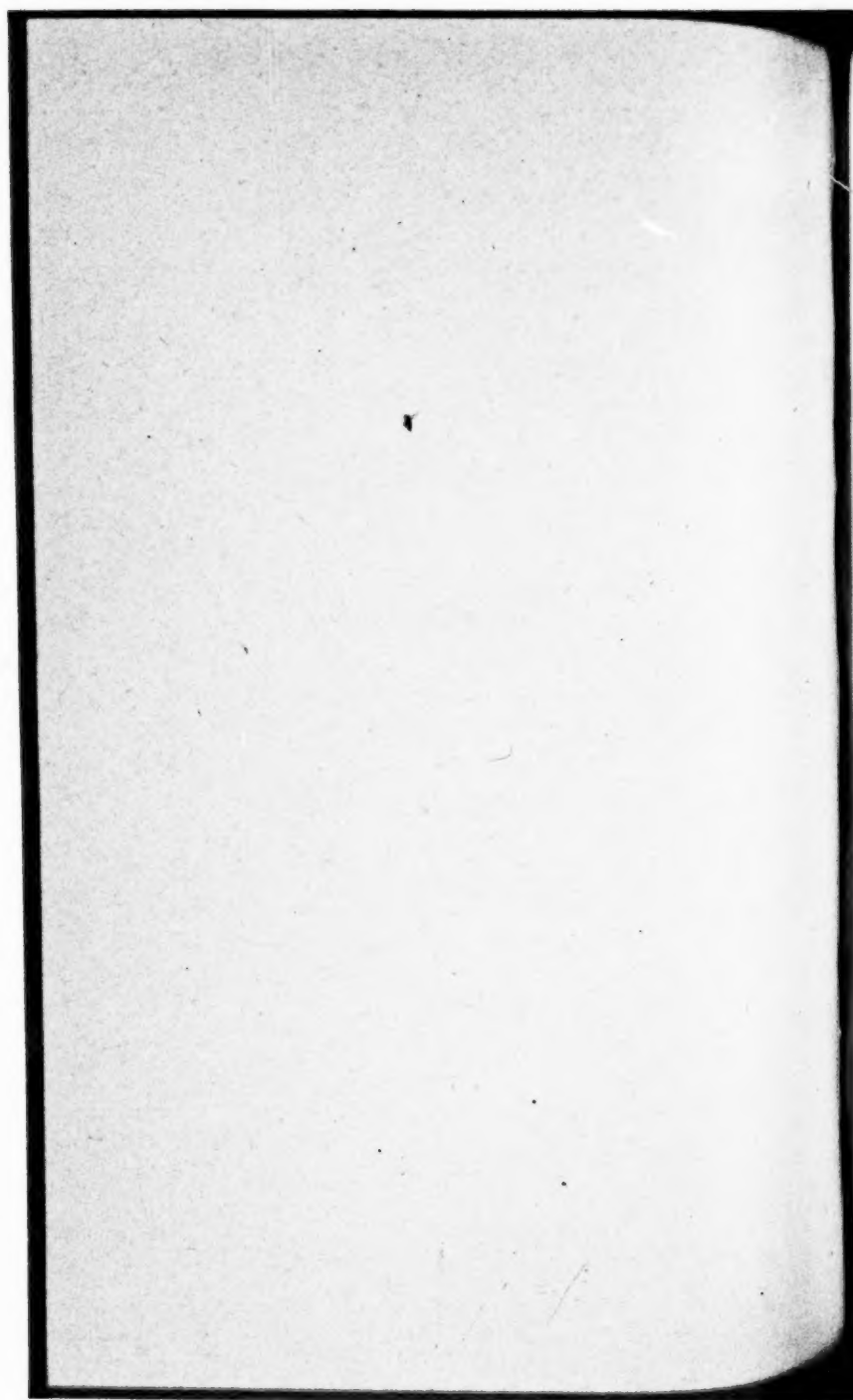
Defendant in Error.

BRIEF ON BEHALF OF THE DEFENDANT IN ERROR

✓ **DENNIS G. BRUMMITT,**
Attorney-General of North Carolina,
FRANK NASH,

Assistant Attorney-General
of North Carolina,

For Defendant in Error.



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In the Supreme Court of the United States

October Term, 1925

No. 106

RHODE ISLAND HOSPITAL TRUST COMPANY,
EXECUTOR OF GEORGE BRIGGS, DECEASED,
Plaintiff in Error,

v.

RUFUS A. DOUGHTON, COMMISSIONER OF REVENUE
OF THE STATE OF NORTH CAROLINA,
Defendant in Error.

BRIEF ON BEHALF OF THE DEFENDANT IN ERROR.

STATEMENT.

George Briggs, a resident of the State of Rhode Island, died October 29, 1919, leaving a last will and testament in which he appointed the plaintiff in error, Rhode Island Hospital Trust Company of Providence, Rhode Island, hereinafter called the Trust Company, his executor. The Trust Company duly qualified as executor in the municipal court of the city of Providence, Rhode Island, November 25, 1919. The estate so bequeathed was quite valuable. Of it were certain shares of stock of the R. J. Reynolds Tobacco Company, hereinafter called the Tobacco Company, the appraised value of which was \$115,634.50. All of said stock was bequeathed to legatees who resided without the State of North Carolina (R. p. 22) and the shares of stock themselves were physically located out of the State of North Carolina at the time of decedent's death. The Tobacco Company was incorporated in the State of New Jersey April 4, 1899, (R. p. 26). (Note: It had also been incorporated in North Carolina February 27, 1899,

Chapter 109, Private Laws 1899. See copy of the act as Appendix A to this brief.) The Tobacco Company domesticated in North Carolina under Section 1194 of the Revisal of 1905, now Section 1181 of the Consolidated Statutes of 1919, August 14, 1906, (R. p. 27). Two-thirds in value of the Tobacco Company's entire property was located in North Carolina before and at the time of the death of Mr. Briggs and has been so located at all times since (R. p. 32). The predecessor of the present defendant in error, the Commissioner of Revenue of North Carolina, to whom had been committed the administration of the inheritance tax law applicable to this estate, Part 2 of Chapter 131, Consolidated Statutes of 1919, Second Volume, Sections 7772 *et sequitur*; Chapter 40, Public Laws 1921, assessed an inheritance tax of \$2,678.85 upon the transfer of two-thirds in value of the stock of decedent in the Tobacco Company. This sum was paid by the Trust Company, plaintiff in error, to the Commissioner of Revenue of the State of North Carolina under protest and this action was brought to recover said sum so paid. There is no controversy as to the amount paid and no contention that the amount is incorrect if the statute under which it is levied is constitutional. The statute particularly involved is as follows: section 7772 *ut sup.*, p. 946 and section 7776, p. 948,

"From and after the passage of this act all real and personal property of whatever kind and nature which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, whether the person or persons dying seized thereof be domiciled within or out of the State (or if the decedent was not a resident of this State at the time of his death, such property or any part thereof within this State), or any interest therein or income therefrom which shall be transferred by deed, grant, sale, or gift, made in contemplation of the death of the grantor, bargainor, donor, or assignor, or intended to take effect in possession or enjoyment after such death, to any person or persons or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body corporate or politic shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be and hereby is made subject to a tax for the benefit of the State as follows, that is to say:

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"Seventh. The words 'such property or any part thereof or interests therein within this State' shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other state or country, when such incorporated company is the owner of property in this State, and if 50 per cent or more of its property is located in this State, and when bonds or shares of stock in any such company not incorporated in this State, and owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such company, and the exemptions allowed shall be the proportion of exemption allowed by this act, as related to the total value of the property of the decedent.

"Any incorporated company not incorporated in this State and owning property in this State which shall transfer on its books the bonds or shares of stock of any decedent holder of shares of stock in such company exceeding in par value five hundred dollars, before the inheritance tax, if any, has been paid, shall become liable for the payment of the said tax, and any property held by such company in this State shall be subject to execution to satisfy same. A receipt or waiver signed by the State Tax Commission of North Carolina shall be full protection for any such company in the transfer of any such stock or bonds."

The Supreme Court of North Carolina interpreted this statute as requiring the assessment and collection of this tax. The Court further held that, so interpreted, it did not offend against either the State or Federal Constitution. See R. pp. 40 to 50, inclusive; 187 N. C., 263.

The Federal question involved in the determination of this cause, then, arises out of the alleged opposition of this statute so interpreted to Section 1 of the Fourteenth Amendment to the United States Constitution. The Trust Company, plaintiff in error, contends that shares of stock in a corporation are themselves property whose situs is the domicile of their owner, regardless of the location of the property of the corporation without which the shares could have no value. This contention is necessarily based upon the theory that such shares of stock are property in the hands of their owner by a fixed, rigid and invariable rule of law, and, being such, the State cannot tax their transfer in the instant

case without contravening the due process of law or equal protection provision of the Fourteenth Amendment.

The defendant in error controverts this contention. He says that the conception of a corporation as an entity apart from its shareholders is a mere fiction of law, valuable in defining its duties and responsibilities as a corporate body to the public and to its members. Otherwise, it may be disregarded by the Legislature for the real truth and substance of the thing without such Legislature being guilty of extortion or of offending against due process. In the instant case the shares of stock involved are in reality engraved paper having no intrinsic value. They are valuable only because they are evidence of an aliquot interest in property, two-thirds of which is located in North Carolina. The General Assembly of North Carolina by express legislation has adopted this theory and so in no sense can the law quoted above offend against the Fourteenth Amendment. Particularly is this true when this legislation did not arise out of the fact itself, but was merely an extension to inheritance taxes of the general policy of the State shown for forty years or more in its taxation of corporations and of the shares of stock of such corporations in the hands of individual holders.

SUMMARY OF POINTS ARGUED.

(1) An inheritance tax is in no sense a tax upon property, but is a levy upon the exercise of a state granted privilege to dispose of property at one's death or to receive such property by reason of the death of the former holder.

(2) The authority to tax this privilege is not restricted by the Fourteenth Amendment unless the statute plainly offends against the due process or equal protection clauses of that Amendment.

(3) The idea of a corporation as a legal entity, or person apart from its members, is a mere fiction of law. When this fiction is urged to an extent not within its reason and purpose, it should be disregarded and the corporation considered as an aggregation of persons both in equity and law.

(4) The State of North Carolina adopted this rule years ago and has adhered to it consistently since in raising revenue by taxa-

tion of property of corporations and of the shareholders in such corporations. The act of 1919, set out in full above, but extended this salutary and just principle to inheritance taxes.

(5) The act thus interpreted does not offend against the Fourteenth Amendment as the shares of stock held by the decedent in another state are not themselves property but only evidences of his ownership of an interest in property actually located in North Carolina, the statute being careful to fit the taxable value of the transfer of such shares to the proportion of the property owned and operated by the corporation within the State.

(6) As this is in reality taxation of the transfer of an interest in property located in the State, the General Assembly may impose the obligation to pay such tax upon the custodian of the property within the State. Much more may it, then, impose this liability upon the Tobacco Company in the instant case if it should transfer the stock of decedent upon its books without the waiver of the Commissioner of Revenue required to give such transfer validity.

ARGUMENT.

I.

An inheritance tax is in no sense a tax upon property but is a levy upon the exercise of a State granted privilege to dispose of property at one's death or to receive such property by reason of the death of the former holder.

The authorities are so uniform to the effect thus stated that it is not necessary to cite many cases.

IN NORTH CAROLINA:

"We do not regard the tax in question as a tax on property, but rather as a tax imposed on the succession—on the right of the legatee to take under the will or of a collateral distribution in the case of intestacy. . . . Neither can it be held a tax on property merely because the amount of the tax is measured by the value of the property."

Pullen v. Commissioners, 66 N. C., 363.

"A succession tax is a tax on the right of succession to property and not on the property itself. The right to take property by devise or descent is not one of the natural rights of man, but is the creature of the law."

In re Morris' Estate, 138 N. C., 259;
State v. Bridgers, 161 N. C., 247;
Norris v. Durfey, 168 N. C., 321;
In re Inheritance Tax, 168 N. C., 356;
Corp. Com. v. Dunn, 174 N. C., 679;
Wach. B. & T. Co. v. Doughton, 189 N. C., 50.

IN THE UNITED STATES COURT:

"An inheritance tax is not one on property but one on the succession. The right to take property by devise or descent is the creature of the law and not a natural right; a privilege, and therefore, the authority which confers it may impose conditions upon it."

Magoun v. Bank, 170 U. S., 283;
Knowlton v. Moore, 178 U. S., 41;
Blackstone v. Miller, 188 U. S., 207;
Chandler v. Kelsey, 205 U. S., 466;
Keeney v. New York, 222 U. S., 525;
Wheeler v. Sohmer, 233 U. S., 434;
Bullen v. Wisconsin, 240 U. S., 625;
Marwell v. Bugbee, 250 U. S., 525;
Watson v. State Comptroller, 254 U. S., 122;
Nickel v. Cole, 256 U. S., 222.

II.

The authority to tax this privilege is not restricted by the Fourteenth Amendment unless the statute plainly offends against the due process or equal protection clause of that amendment.

"It is true that this case (*Carpenter v. Pennsylvania* 17 How., 456) was decided before the adoption of the 14th Amendment, but we think it correctly defines the limits of jurisdiction between the State and Federal Governments, in respect to the control of the estates of decedents, both as they were regarded before, and have been regarded since, the adoption of the 14th Amendment. It has never been held that it was the purpose or function of that amendment to change the systems and policies of the states in regard to

the devolution of estates, or to the extent of their taxing power over them." *Orr v. Gilman*, 183 U. S., 278.

"And, excluding our right to consider policies or assume legislation, we have many times said that a state in its purposes and in the execution of them must be allowed a wide range of discretion, and that the court will not make itself a harbor in which can be found a refuge from ill-advised, unequal and oppressive legislation. 102 U. S., 691." *Billings v. Illinois*, 188 U. S., 97.

"The 14th Amendment does not deprive a state of the power to regulate and burden the right to inherit, but at the most can only be held to restrain such an exercise of power as would exclude the conception of judgment and discretion, and which would be so obviously arbitrary and unreasonable as to be beyond the pale of governmental authority." *Campbell v. California*, 200 U. S., 87. See, also,

Cohen v. Brewster, 203 U. S., 543;
Board of Education v. Illinois, 203 U. S., 553;
Beers v. Glynn, 211 U. S., 477;
Moffit v. Kelly, 218 U. S., 400;
Stebbins v. Riley, No. 227, Oct. Term, 1924, 45 S. C., Rep. 424.

III.

The idea of a corporation as a legal entity or person apart from its members is a mere fiction of law. When this fiction is urged to an extent not within its reason and purpose it should be disregarded and the corporation considered as an aggregation of persons both in equity and law.

The words "association of persons," are often, and not inaptly, employed to describe a corporation. An incorporated company is an association of individuals acting as a single person, and by their corporate name. As this Court has said "private corporations are but associations of individuals united for some common purpose, and permitted by law to use a common seal, and to change its members without a dissolution of the corporation." *Baltimore & P. R. Co. v. Fifth Baptist Church*, 108 U. S., 317; *United States v. Trinidad Coal & C. Co.*, 137 U. S., 160. See, also, *Hale v. Henkel*, 201 U. S., 43.

"Undoubtedly a corporation is, in law, a person or entity entirely distinct from its stockholders and officers. . . . But while this presumption should be enforced to protect the corporation, it should not be carried so far as to enable the corporation to become a means of fraud, *or a means to evade its responsibilities.*" *J. J. McCaskill Co. v. United States*, 216 U. S., 504. See, also, *Linn Timber Co. v. United States*, 236 U. S., 574; *Northern Securities Co. v. United States*, 193 U. S., 332; *Standard Oil Co. v. United States*, 221 U. S., 1; *United States v. American Tobacco Co.*, 221 U. S., 106.

It will, however, be said that in each of these cases the corporate fiction was set up as a shield for a positive wrong, and the courts disregarded it for that reason. "Fictions of law, invented to promote justice, can never be invoked to accomplish its defeat." *Mostyn v. Fabrigas*, Cowp., 177. This, we submit, is but to say that the fiction was made by judges, and so may be disregarded by them, when in the administration of the law it should run counter to their conception of justice. The proper law-making power in this country, though, is the legislature, and it cannot be successfully controverted that it has authority to modify, or abolish fictions, though they may have been judicially created. We will return to this in the discussion under the subhead V.

IV.

The State of North Carolina adopted this rule years ago and has adhered to it consistently since in raising revenue by the taxing of corporations and of the shareholders in such corporations. The Act of 1919, set out in full above, but extended this salutary principle to inheritance taxes.

Chapter 117, sec. 8 (6), Laws 1881 provided:

"Stockholders in valuing their shares" (for taxation) "may deduct their ratable proportion of the value of taxable property, the tax whereof is paid by the corporation."

Chapter 363, sec. 8, Laws 1883, brings the same provision forward, as does chapter 177, sec. 12 (6), Laws 1885.

See Railroad Co. v. Commissioners, 87 N. C., 414.
Worth v. Railroad, 89 N. C., 301.
Railroad Co. v. Commissioners, 91 N. C., 454.

The remaining acts herein referred to are substantially similar.

Chapter 137, sec. 14, Laws 1887;
 Chapter 218, sec. 16, Laws 1889;
 Chapter 326, sec. 15, Laws 1891;
 Chapter 296, sec. 14, Laws 1893;
 Chapter 119, sec. 14, Laws 1895;
 Chapter 169, sec. 14, Laws 1897;
 Chapter 15, sec. 14, Laws 1899;
 Chapter 9, sec. 9, Laws 1901;
 Chapter 247, sec. 4, Laws 1903;
 Chapter 588, sec. 4, Laws 1905;
 Chapter 256, sec. 4, Laws 1907;
 Chapter 438, sec. 4, Laws 1909;
 Chapter 46, sec. 4, Laws 1911;
 Chapter 201, sec. 4, Laws 1913;
 Chapter 285, sec. 4, Laws 1915;
 Chapter 231, sec. 4, Laws 1917;
 Chapter 90, sec. 4, Laws 1919.

From 1887 to 1899 the method set out in the statutes was as follows:

"Persons owning shares in incorporated companies, taxable by law, are not required to deliver to the list taker a list thereof, but the president or chief officer of such corporation shall deliver to the list taker a list of all shares of stock held therein and the value thereof, except banks. The tax assessed on shares of stock embraced in said list shall be paid by the corporations respectively. *Provided*, that (this) section cannot be construed so as to impose a double tax on said corporation."

The effect of this was, of course, to tax the property of the corporation and exempt wholly its shares in the hands of its shareholders from taxation, there being in the statute no authority given the corporation to charge this stock tax to its several shareholders.

From 1901 to 1919 inclusive the statutes were more direct:

"Individual stockholders in any corporation, joint stock association, limited partnership or company paying a tax on its capital stock, shall not be required to pay any tax on said stock or to list the same."

The stock tax referred to above was, under the Act of 1919, section 7771 of the Consolidated Statutes of 1919, a single state tax amounting to thirty-six cents on the \$100 of value of such

stock, ascertained in the manner provided in section 7941 of the same compilation. There were so many deductions allowed in estimating the value of this stock, that in 1919, out of a capitalization of domestic corporations, excluding public service corporations and banks, of \$160,000,000, approximate, the net proceeds of this tax was \$347,055.06, as shown by the report of the State Treasurer, 1919-1920, page 34.

In 1915 this privilege of exemption of shares of stock from taxation was extended to corporations holding shares in other corporations. Section 4, chap. 285. In 1917, section 4, chap. 231, this was added to section 4: "Nor shall any individual stockholder of any foreign corporation be required to list or pay taxes on any share of its capital stock, if two-thirds in value of its entire property is situated and taxed in the State of North Carolina, and the said corporation pays franchise tax on its entire issued and outstanding capital stock at the same rate as paid by domestic corporations."

By the act of 1919, chapter 90, sec. 4, another alternative was incorporated in this clause: "or if such corporation has tangible assets in this State assessed for taxation at a value exceeding the par value of the total stock owned by citizens of this State," see section 7771 of Consolidated Statutes 1919.

The Tobacco Company availed itself of these provisions. Record p. 30.

As further showing that the fiscal and economic policy of the State identified the property of the shareholder in his share with that of the corporation in its property, attention is called to the fact that in 1921 the State ceased levying any stock tax upon the corporation, yet maintained in active force the exemption of such shares of stock in the hands of the shareholder from any taxation. P. L. 1921, chapter 34, sections 3 and 4. Again, in 1923, P. L. 1923, chapter 4, sec. 4, the General Assembly to avoid double taxation, put shares of stock in a foreign corporation on the same footing as shares in a domestic corporation as to exemption from taxation, using the following words: "Nor shall any individual stockholder of any foreign corporation be required to list or pay taxes on any share of its capital stock in this State, and the situs of such shares of stock in foreign corporations, owned by residents of this State for the purpose of this act is hereby declared to be

at the place where such corporation undertakes and carries on its principal business."

This exemption of shares of stock in domestic corporations from taxation was challenged in *Person v. Watts*, 184 N. C., 499, as offending against section 3 of Article V of the State Constitution. That section, so far as material is:

"Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money."

The Court, however, sustained the constitutional validity of the exemption in an exhaustive opinion in which the subject is treated fully, both in its historical and in its legal and constitutional aspects.

At page 508, *Adams, J.*, says: "Certainly there can be no doubt that the shareholder's 'investment' is taxed as the Constitution requires. The truth is, the certificate of stock represents the shareholder's investment in the corporation as the landholder's deed represents his investment in the land. If the land is taxed why tax the deed? If the capital stock is taxed, why tax the certificate which represents the stock? No doubt the Legislature possesses the power to repeal the statute and to tax both; no doubt it possesses the power to devise a system of taxation that would be more burdensome to all classes, but if the Constitution does not require it, why should such additional burden be imposed? It is not denied that shares of stock in a restricted sense are the individual property of the owner, and in such sense may be considered as separate from the capital stock. The holder may sell his certificate without the consent of the company, but in doing so he sells only his interest in the corporation. His interest as a shareholder may become adverse to that of the corporation, but by investing in the capital stock he parts with the individual control of his money. It is only in this limited sense that shares of stock are separate from the corporation. In its broader and more real sense the interest of the shareholder is inseparable from that of the corporation. In the larger sense there is but one property, for shares of stock have value only as the taxed property of the corporation has value. During his lifetime the owner can derive no income from his shares unless the business of the corporation

earns a profit; and upon his death, when his personal property passes to his distributees, it is not the certificate that is subject to an inheritance tax, but under a special act the value of the owner's interest in the corporation represented by the certificate, just as such tax is assessed, not upon the deed, but upon the value of land which descends from the ancestor to the heir."

The Supreme Court of North Carolina reaffirms this position in *Person v. Doughton*, 186 N. C., 723. In the decision in that case it was dealing with the act of 1923, which exempted shares of stock in foreign corporations from taxation.

It is therefore, we submit, demonstrated that for years both the legislative and judicial departments of the State have disregarded the fiction of a separate corporate entity, as a matter of public policy, in all revenue legislation, and that the act of 1919, was intended to co-ordinate the inheritance tax law with the other revenue acts of the State.

V.

The Act thus interpreted does not offend against the Fourteenth Amendment as the shares of stock held by the decedent in another State are not themselves property, but only evidence of decedent's ownership of an interest in property actually located in North Carolina, the statute being careful to fit the taxable value of the transfer of such shares to the proportion of the property owned and operated by the corporation in the State.

This is true:

First, because while title to corporate property is in the corporation, the substantial beneficial ownership is, in equity at least, in the stockholders. Stockholders acting as a body unanimously, may execute a valid mortgage on the corporate property.

Gadsden First National Bank v. Winchester, 119 Ala., 168;
Swift v. Smith, 65 Md., 428;
Bundy v. Ophir Iron Co., 38 Oh. St., 300.

The beneficial interest is in the stockholders.

United States v. Wollers, 46 Fed., 509;
Warren v. Davenport Fire Ins. Co., 31 Iowa, 464;
State v. Brinkhop, 238 Mo., 298.

This interest is insurable.

Seaman v. Enterprise F. & M. Ins. Co., 21 Fed., 778;
Aetna Fire Ins. Co. v. Kennedy, 161 Ala., 600;
Riggs v. Commercial Mut. Ins. Co., 125 N. Y., 7.

Many of the cases in this Court, which recognize a distinct property in the shareholder in his shares of stock, do so in determining the constitutionality of a statute, which was enacted in recognition of this principle. See *Hawley v. Malden*, 232 U. S., 1. In truth, then, they simply sustain statutes which make the corporate fiction a reality, and should be, we submit, interpreted in this light. Why, then, are they not authorities for the position taken in this brief:—that the Legislature may, without conflict with the 14th Amendment, disregard this fiction for the reality of the matter? Compare *Blackstone v. Miller*, 188 U. S., 189, with *Wheeler v. Sohmer*, 233 U. S., 434.

In *Denver v. Hobbs' Estate*, 144 Pac. Rep., 874, 58 Colo., 220 it is said:

"It is urged that shares of stock in a foreign corporation are the personal property of the owner, separate and distinct from the capital of the corporation, for which reason they form separate and distinct subjects for taxation and should be thus taxed at the residence of the owner. Assuming they are personal property, they are inconsequential property. They are merely tokens or evidence of ownership of an interest in corporate property of a corporation or something of the kind unnecessary to determine and if destroyed, the holder loses nothing. He is still the owner of what they purported to represent. It is of that class of property that its situs for the purpose of taxation is a matter of legislative control, as is also the method to be provided by its assessment."

See *Tappan v. Merchants National Bank*, 86 U. S., 490; *Farlington v. Tenn.*, 95 U. S., 679; *Corry v. Baltimore*, 196 U. S., 466; *Rogers v. Hennipen County*, 240 U. S., 184.

Chief Justice Chase dissented in *Van Allen v. The Assessors*, 70 U. S., 598, but this part of his dissenting opinion was not in conflict with the opinion of the Court:

"It is true that the shareholder has no right to the possession of any part of the corporate property while the corpora-

tion exists and its affairs are honestly managed. He has committed his interest, for a time, to the possession and control of the corporation of which he is a member, and he has only a member's voice in the management of it.

"So a man who has leased a farm has no right to possession or control during the lease; but who denies his property in the farm? And if a dozen owners join in the lease, has not each one an interest in the property to the extent of one-twelfth?"

"So, if for the time the property of the shareholder is placed beyond his direct control and converted into property of the association, how can that circumstance affect the intrinsic character of his shares as shares of the whole corporate property? How can a man's shares of any property be subject of valuation at all if not with reference to the amount and productiveness of the property of which they are a part? What value can they have except that given them by that amount and that productiveness? A certificate of title to a share is not a share. It is evidence of the shareholder's interest. His interest may be transferred by the transfer of the certificate; but it is not the certificate that is valued when the worth of the share is estimated either by the speculator in the market or by the tax assessor. It is the property which it represents that is valued by the speculator, often with reference to speculation only, but by the public officer, always, if he does his duty, by the real worth of the property, all things considered."

In I Morawetz on Corporations, 2d Edition, section 227, p. 221 it is said:

"The statement that a corporation is an official person or entity apart from its members is merely a description in figurative language of a corporation viewed as a collective body. A corporation is really an association of persons and no judicial dictum or legislative enactment can alter this fact."

Section 232 *idem.* p. 227.

"In all cases it is indispensable that the fiction of a corporate entity apart from the individual shareholders be preserved unimpaired in measuring and enforcing those rights and obligations *which are of a corporate character.*"

See, also, 3 Cook on Corporations, 8th Edition, sections 663 and 664.

It is stated in section 27 (subsection 7) of 14 C. J., p. 63:

"While the title and ownership of property and business of a private business corporation is vested in the corporation as a distinct legal entity and artificial person, the stockholders or members are nevertheless interested therein within the meaning of the statutes and rules of law since the beneficial interest is in them."

The basis of the rule making a corporation a distinct entity and the modifications of that rule are thus stated in section 20 (subsection 4) of 14 C. J., p. 59:

"Although the doctrine that a corporation is a legal entity and person in the law distinct from the members who compose it will always be recognized and given effect, both at law and in equity, in cases which are within its reason and when there is no controlling reason against it, and although in some cases it seems to have been given effect contrary to reason, it is clear that a corporation is in fact a collection of individuals who, in the case of modern private corporations, really own its property and carry on the corporate business, through the corporation and its officers and agents, for their own profit or benefit, and that the idea of the corporation as a legal entity or person apart from its members is a mere fiction of the law introduced for convenience in conducting the business in this privileged way; and it is now well settled, as a general doctrine, that, when this fiction is urged to an intent not within its reason and purpose, it should be disregarded and the corporation considered as an aggregation of persons, both in equity and at law."

Second. The State has constitutional authority to disregard this fiction, particularly when this is done with no ulterior purpose but with the intent to conform its inheritance tax laws to its consistent policy of disregarding the fiction in all of its revenue acts in relation to the taxation of the property of corporations and of their shareholders. It is declared in *Blackstone v. Miller*, 188 U. S., 189:

"When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way."

See *Adams Express Company v. Ohio State Auditor*, 166 U. S., 185; *New Orleans v. Stemple*, 175 U. S., 309. There is nothing, we submit, in the recent case of *Frick v. Pa.*, Nos. 122 to 125, October Term of this Court, 45 S. C. Rep., 603, which conflicts with this view. The effect of that decision was to deny the State authority to assess a transfer or inheritance tax upon tangible personal property located without its boundaries. In this case, while it is true that the Tobacco Company is technically a corporation organized under the laws of New Jersey, yet its real habitat, in the sense in which it does most the larger proportion of its business, is in the State of North Carolina where it has domesticated and in which it does an enormous business. At p. 29 of the Record is a statement of the authorized capital stock of the company, of its par value and of the amount issued and paid for. Its principal place of business is in the State of North Carolina and it has not only, as above said, domesticated in the State, but it has submitted itself to its jurisdiction under section 4 of the Revenue Act of 1919 hereinbefore set out in full (R. p. 28). It is contended that under such circumstances the State has constitutional authority to levy an inheritance tax upon the transfer of only that part of the stock which is represented by the value of the property located in the State. This is fair and just, because the Tobacco Company is conducting its very profitable business under the fostering care of the laws of the State of North Carolina and practically all the profits that accrued to the decedent during his life from his ownership of his shares of stock in this corporation accrued in the State of North Carolina. See *Young v. South Tredegar Iron Company*, 85 Tenn., 189; *In re Bronson's Estate*, 150 N. Y., 44, and *In re Culver's Estate*, 145 Iowa, 1. In *Young v. South Tredegar Iron Company*, the corporation was in the State of Tennessee in very much the same manner as the Tobacco Company is now in the State of North Carolina. Under the statutes of Tennessee an attachment was levied upon the interest of a non-resident shareholder in that corporation in Tennessee and such levy was sustained. See, also, *Parks Cramer Company v. Southern Express Company*, 185 N. C., 428.

If the position contended for is not sound, then it is easy to conceive a corporation incorporated in another state and doing business in this State with all of its property in the State, whose

shares of stock would not be and could not be subject to the inheritance tax levied by the State. We submit that under such circumstances the Courts will be permitting an injustice to be done to the citizens of the State of North Carolina in denying the right of the Legislature to disregard the fiction of a corporate entity. As hereinbefore said, this fiction is uniformly disregarded by the Courts whenever in the opinion of the Court it would work an injustice. Here, then, is the State of North Carolina which has put in effect a State policy in relation to its taxation and has followed that policy for many years in which this fiction of corporate entity has been uniformly disregarded, and now it has in express terms applied this public policy in this particular to inheritance taxes, not with the view so much to impose this tax upon such a class of transfer as to conform its inheritance tax law to its declared policy. It seems certain, we submit, that if Courts may disregard the corporate fiction to meet their conception of public policy and the right of things, much more may the Legislature disregard such fiction.

VI.

As this is in reality taxation of the transfer of an interest in property located in the State, the General Assembly may impose the obligation to pay such tax upon the custodian of the property within the State. Much more may it, then, impose this liability upon the Tobacco Company in the instant case if it should transfer the stock of decedent upon its books without the waiver of the Commissioner of Revenue required to give such transfer validity.

A state can under its taxing power and without denial of due process, tax property having a situs within its borders, irrespective of the residence of the owner and can impose, if necessary, the obligation to pay such tax upon the custodian or possessor of such property.

Kirkland v. Hotchkiss, 100 U. S., 498;
Bristol v. Washington Co., 166 U. S., 141;
Carstairs v. Cochran, 193 U. S., 10.

Chief Justice Fuller in Bristol v. Washington Co., supra, quotes with approval the following extract from the opinion of the Supreme Court of Minnesota in 35 Minn., 215:

"The obligation to pay taxes on property for the support of the government arises from the fact that it is under the protection of the government. Now, here was property within this State, not for a mere temporary purpose, but as permanently as though the owner resided here. It was employed here as a business by one who exercised over it the same control and management as over his own property, except that he did it in the name of an absent principal. It was exclusively under the protection of the laws of this State. It had to rely on those laws for the force and validity of the contracts on the loans, and the preservation and enforcement of the securities. The laws of New York never operated on it. If credits can ever have an actual situs other than the domicile of the owner, can ever be regarded as property within any other state, and as under obligation to contribute to its support in consideration of being under its protection, it must be so in this case."

Justice Brewer in Carstairs v. Cochran, supra, declares:

"A state has the undoubted power to tax private property having a situs within its territorial limits; and may require the party in possession of the property to pay the taxes thereon."

See, also, *Travis v. Yale & Towne Mfg. Co.*, 252 U. S., 60. It is to be observed that the Tobacco Company is not complaining in this proceeding against the effect of this law upon it. Indeed, it could not, it having not only domesticated itself within the State, but having submitted itself to its jurisdiction for taxing purposes under the act of 1919, as hereinbefore stated. In *Travis v. Yale & Towne Mfg. Co., supra*, it is held:

"A state may, without violating the due process provision of the Fourteenth Amendment, impose a tax on the incomes of nonresidents arising from any business, trade, profession, or occupation carried on within its borders, enforcing payment, so far as it can by exercise of a just control over persons and property within the state, as by garnishment of credits."

Plaintiff in error relies upon certain cases which deal with the taxation of the transfer by a non-resident decedent of shares of stock in a corporation chartered in another state but located with part of its property in the state proposing to collect the tax. These cases naturally fall into two classes:

(a) Those where the court in interpreting a general statute, which does not specifically impose a tax, holds that the tax cannot be assessed under the general words of the act in question because the property in the share of stock is distinct from the property of the corporation itself, and the share being located without the taxing state, it has no authority to impose the tax.

People v. Bennett, 276 Ill., 43;

People v. Blair, 276 Ill., 623;

State v. Dunlap, 28 Idaho, 784;

Welch v. Burrell, *State Treas.*, 223 Mass., 87;

In re Harkness Estate, 83 Okla., 107.

It is manifest, we respectfully submit, that these cases are in no way conclusive here,—indeed, they are scarcely in point, for in none of the statutes involved had the state acted by positive legislation upon the corporate fiction. In other words, these decisions did not determine the constitutional power of the state. They interpreted the particular act as not conferring upon the taxing authority of the particular state the power claimed. There can be no doubt that the North Carolina court, in the cause herein reviewed, would have adopted the principle of these cases had not the statute of that State created a new and different situation. See opinion, Record pp. 40 to 53, particularly at 41. The whole *ratio decidendi* is based upon this manifest distinction.

(b) Those which hold an act somewhat similar to the North Carolina act attacked herein, unconstitutional. The Wisconsin Act, 1 Wisconsin Statutes, p. 800, was as follows:

“Sec. 72.11 (3): Where stocks, bonds, mortgages or other securities of corporations organized under the laws of this State or of foreign corporations owning property or doing business in this State shall have been transferred by a non-resident decedent, the tax shall be upon such proportion of the value thereof as the property of such corporation in this

State bears to the total property of the corporation issuing such stocks, bonds, mortgages, or other securities."

Luse, District Judge, held this act unconstitutional in *Tyler v. Dane County*, 289 Fed., 843, and this decision was followed by the Supreme Court of Wisconsin in *Shepard v. The State*, 184 Wis., 88. Both of these decisions were founded upon the principle that in Wisconsin there is a fundamental difference between the capital of a corporation and its capital stock. The former belongs to the corporation; the latter, when issued, to the stockholder. Thus *Judge Luse* says, *Tyler v. Dane County, supra*, at p. 851:

"By section 1751 of the Wisconsin Statutes it is provided that 'the capital stock of every corporation divided into shares, shall be deemed personal property,' and by the Uniform Stock Transfer Act adopted in 1913 the idea of the independence of the shares as property, distinct from that of the corporation, is accentuated by provisions permitting transfer by delivery of the certificate, indorsed in blank, notwithstanding charter or other formerly equally binding regulations requiring transfer on the books of the corporation."

This, of course, is a statutory definition of the relation of the stockholder to the corporation of which he is a member, as is shown by the context of the act cited. North Carolina has an act somewhat similar: section 1164 of the Consolidated Statutes of 1919, Volume I, page 500:

"*Transfer of shares.* The shares of stock in a corporation are personal property, and are transferable on the books of the corporation in the manner and under the regulations provided by the by-laws. Whenever a transfer is made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer."

This was first enacted in 1901, section 21 of chapter 2, Laws of 1901, the chapter being entitled "An act to revise the corporation law of North Carolina." This simply defines the relation of the stockholder to the corporation. See *Bleakley v. Candler*, 169 N. C., 16. Before, at the time of, and subsequent to, its enactment, the State of North Carolina for all the purposes of taxation

has treated a share of stock as representing an interest in the corporation, as we think we have shown heretofore in this brief. In Wisconsin, however, the share of the stockholder in a corporation is not exempt from taxation on account of his relation to that corporation, which itself pays taxes on its property. It is absolutely exempt with all other property of a similar nature. That statute is as follows:

"All moneys or debts due or to become due to any person and all stocks and bonds, including bonds issued by any county, town, city, village, school district or other political sub-division of this State not otherwise specially provided for."

Wisconsin Statutes, Volume I, section 70.11, p. 762.

This difference in the situation in Wisconsin and that in North Carolina creates a distinction between those cases and this, which is to some extent, at any rate, fundamental. The question here is, does the Fourteenth Amendment prohibit the State of North Carolina from extending to inheritance taxes its general policy as shown for many years in its identification of property in the share of stock with the property of the corporation itself for all taxation purposes?

There is another case, determined by the Supreme Court of Montana, *State ex rel. Trust Co. v. Walker*, 70 Mont., 484, which is somewhat nondescript. It quotes the Montana statute, states that it was adapted from the Wisconsin law, and holds that it was not the intention of the Legislature under that statute to submit shares of stock of the same description, character and location as those in the instant case to an inheritance tax. This case, then, cannot be considered as persuasive on this hearing.

We respectfully submit that the statute here attacked is valid and constitutional, and that the judgment of the Supreme Court of North Carolina should be in all respects affirmed.

DENNIS G. BRUMMITT,

Attorney-General of North Carolina,

FRANK NASH,

Assistant Attorney-General

of North Carolina,

For Defendant in Error.

EXHIBIT "A"

Chapter 109, Private Laws of North Carolina, 1899.

AN ACT TO INCORPORATE THE R. J. REYNOLDS
TOBACCO COMPANY.

The General Assembly of North Carolina do enact:

Section 1. Richard J. Reynolds, William N. Reynolds, Walter R. Reynolds and Robert C. Critz, of Winston, North Carolina, and John F. Parlett, of Baltimore, Maryland, their successors and assigns, are hereby created a body politic and corporate under the name of "R. J. Reynolds Tobacco Company," with a capital stock of one million two hundred thousand dollars, with the liberty and authority to increase the same from time to time or at any one time not to exceed twelve million dollars, to be divided into shares of one hundred dollars each; said stock shall be common and preferred stock, issued in the proportion of two shares of common stock to one share of preferred stock. Said preferred stock shall entitle the holder to receive in each year a dividend to be fixed at the time of the issue of the stock, of not more than eight per centum, payable half-yearly, before any dividend shall be set apart or paid on said general or common stock, and if the net proceeds in any year shall not be sufficient to pay the dividend aforesaid on said preferred stock, that such dividend shall be paid thereon as the net profits of the year will suffice to pay. The holders of the preferred stock shall have a preference on the assets of the company, but the dividends thereon are not to be cumulative, but shall be payable each year out of the profits of that year or out of any unused surplus of subsequent years; and on payment of the preferred stock at its par value with all dividends due thereon, said preferred stock shall not further participate in the assets of the corporation and may be called in and paid as prescribed by the by-laws. Said preferred stock and the certificates therefor may be issued by the board of directors by resolution. Said corporation shall have the privilege and rights hereby specifically granted, and also those conferred upon corporations by the laws of North Carolina.

Sec. 2. That any three of the persons herein incorporated to effect the purpose of this act may open books of subscription and receive subscription to the capital stock of the company at such time and place as they may appoint, and when twenty-five per centum of the capital stock herein first authorized, to wit: One million two hundred thousand dollars shall have been subscribed and paid in, then the stockholders may organize the company. That property of every kind may be received in payment of the capital stock at such valuation as may be agreed upon between the subscriber or subscribers and said stockholders. The stockholders shall not be individually liable for debt or liabilities of the corporation.

Sec. 3. That said corporation is hereby authorized and empowered to conduct, transact and carry on in all its branches and in every manner or form the business of curing, manufacturing, buying and selling tobaccos; and said corporation may manufacture, buy, sell and deal in wares and merchandise of every kind and description; shall have the power to own, hold, lease, purchase, sell and convey real estate and all other kinds of property wherever situate, and own and conduct any business at its will and pleasure; banking, insurance and operating a railroad excepted. The company preposes to carry on its operation in all the other states and territories in the United States, and in all foreign countries and territories.

Sec. 4. That the stockholders of the said corporation shall have the power to make all rules and regulations for the government of said corporation and transaction of its business. They shall have power to elect, in such manner as the majority of the stock may prescribe, such officers as they deem necessary, prescribe their duties, compensation and term of service; and, in general, said stockholders may make such by-laws and regulations for the government and conduct of the said corporation and its business, not inconsistent with the laws of this State and the laws of the United States, as they may consider best calculated to serve their interest.

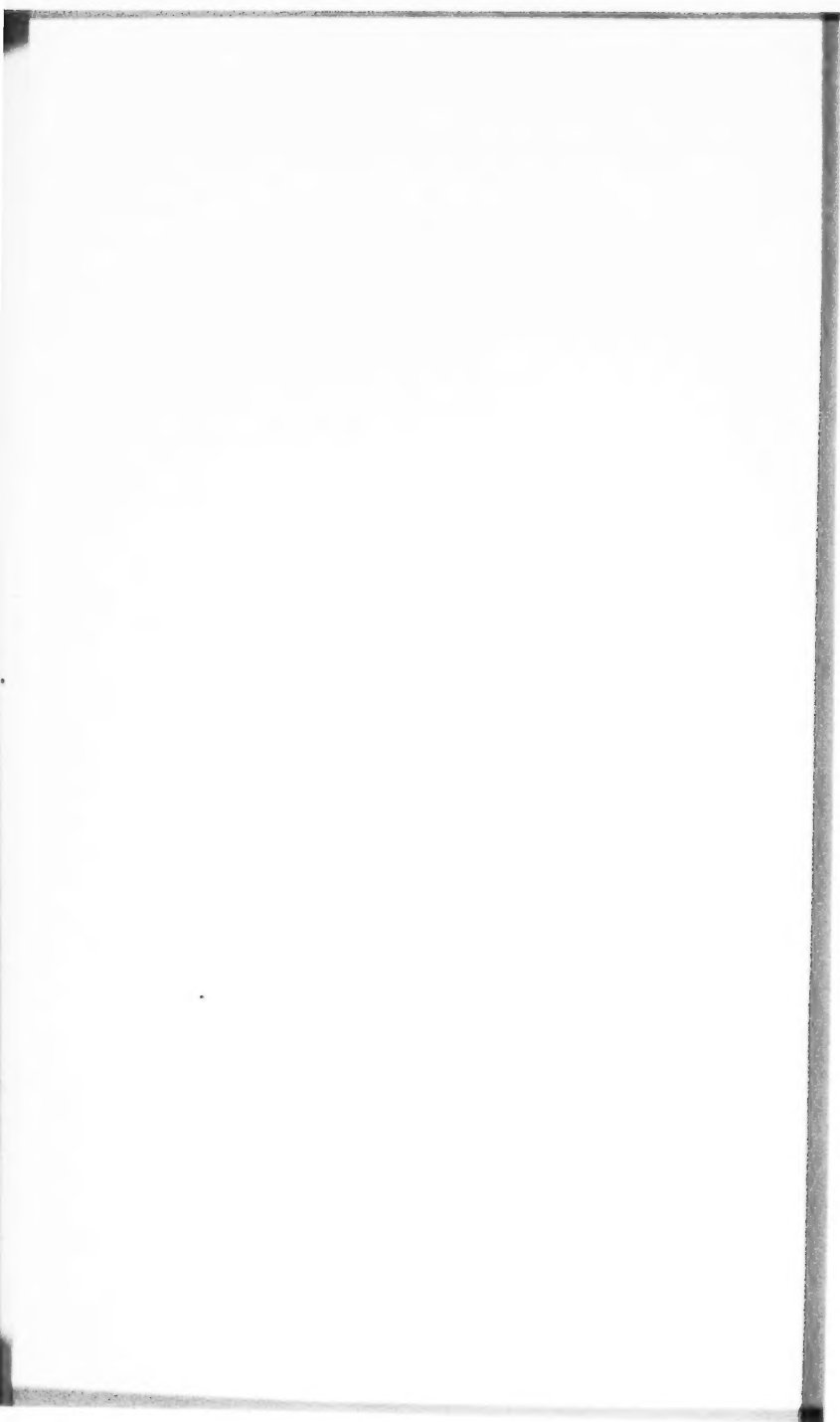
Sec. 5. As such corporation they may have a common seal, which they may break, change and alter at their pleasure.

Sec. 6. That the present corporation, known as the R. J. Reynolds Tobacco Company, chartered under the general law of North Carolina by articles of agreement duly filed in the office of the

clerk of the Superior Court of Forsyth County and doing business in Winston, North Carolina, shall have power and authority to sell, convey and transfer to a corporation formed under this act all its assets, franchise and property of every kind, and to merge itself therein. And the corporation organized under this act shall have power and authority to purchase, receive, take into possession and hold all the assets, franchise and property of every kind belonging to said existing corporation.

Sec. 7. That this act shall be in force from and after its ratification.

Ratified the 27th day of February, A. D. 1899.



SUPREME COURT OF THE UNITED STATES.

No. 106.—OCTOBER TERM, 1925.

Rhode Island Hospital Trust Com- pany, Executor of George Briggs, deceased, Plaintiff in Error, vs. Rufus A. Doughton, Commissioner of Revenue of the State of North Carolina.	}	Error to the Supreme Court of North Caro- lina.
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[March 1, 1926.]

Mr. Chief Justice TAFT delivered the opinion of the Court.

This is a writ of error to the Supreme Court of North Carolina in a consolidation of two causes, the first being an appeal to a Superior Court of the State by the plaintiff in error, the Rhode Island Hospital Trust Company, executor of George Briggs, from an inheritance tax assessment on the decedent's estate made by the Commissioner of Revenue of North Carolina, and the second being an action at law by the executor to recover the taxes paid by it on the assessment under protest. The Superior Court held that the inheritance taxes imposed by the Commissioner of Revenue of the State were lawful and that the executor was not entitled to recover them back as illegally collected. The Supreme Court of North Carolina affirmed this judgment. 187 N. C. 263.

The assignment of error of the executor is based on the invalidity under the Fourteenth Amendment of that part of the Revenue Act of 1919 of North Carolina, Public Laws, c. 90, section 6 and sub-section 7, which provides:

"Sec. 6. From and after the passage of this act all real and personal property of whatever kind and nature which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, whether the person or persons dying seized thereof be domiciled within or out of the State (or if the decedent was not a resident of this State at the time of his death, such property or

any part thereof within this State,) or any interest therein or income therefrom which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, bargainor, donor or assignor, or intended to take effect in possession or enjoyment after such death, to any person or persons or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body corporate or politic shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be and hereby is made subject to a tax for the benefit of the State."

"Seventh. The words 'such property or any part thereof or interest therein within this State' shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other State or country, when such incorporated company is the owner of property in this State, and if 50 per cent or more of its property is located in this State, and when bonds or shares of stock in any such company not incorporated in this State, and owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such company, and the exemptions allowed shall be the proportion of exemption allowed by this act, as related to the total value of the property of the decedent."

The seventh sub-section further provides:

"Any incorporated company not incorporated in this State and owning property in this State, which shall transfer on its books the bonds or shares of stock of any decedent holder of shares of stock in such company exceeding in par value \$500, before the inheritance tax, if any, has been paid, shall become liable for the payment of the said tax, and any property held by such company in this State shall be subject to execution to satisfy the same. A receipt or waiver signed by the State Tax Commission of North Carolina shall be full protection for any such company in the transfer of any such stocks or bonds."

George Briggs was a resident of the State of Rhode Island, and domiciled therein at the time of his death. He never resided in North Carolina. He died testate October 29, 1919, leaving a large estate. The plaintiff, Rhode Island Hospital Trust Company, was appointed executor of Briggs' will, and qualified as such before the municipal court of the city of Providence, Rhode Island. Among other personal property passing to the executor under the will were shares of stock in the R. J. Reynolds Tobacco Company which with declared dividends unpaid were valued at \$115,634.50. The R. J. Reynolds Tobacco Company, hereinafter for brevity

called the Tobacco Company, is a corporation created under the laws of the State of New Jersey. Section 1181 of the Consolidated Statutes of North Carolina provides that every foreign corporation, before being permitted to do business in North Carolina, shall file in the office of the Secretary of State a copy of its charter, a statement of the amount of its capital stock, the amount actually issued, the principal office in North Carolina, the name of the agent in charge of the office, the character of the business which it transacts, and the name and post office addresses of its officers and directors. It is required to pay, for the use of the State, twenty cents for every one thousand dollars of its authorized capital stock, but in no case less than \$25, nor more than \$250. It may withdraw from the State upon paying a fee of five dollars, and filing in the office of the Secretary of State a statement of its wish to do so. In August, 1906, the Tobacco Company filed its application under the statute and complied with the requirements, and a certificate granting authority to it to do business in the State was issued. Two-thirds in value of its entire property is in North Carolina. Since 1906, it has regularly paid the license and franchise tax required, and is still doing business in the State.

Briggs' certificates of stock in the Tobacco Company, passing under his will to his executor, were, none of them, in the State of North Carolina at the time of his death, and never had been while they were owned by him. The Commissioner of Revenue of the State assessed an inheritance tax upon \$77,089.67, 66 $\frac{2}{3}$ per cent. of the total value of Briggs' stock, amounting to \$2,658.85. The plaintiff as executor applied to the office of the company in New Jersey to have this stock transferred to it as executor, in compliance with the will of Briggs. The company refused to do so, on the ground that under the law of North Carolina, already set forth, it would by such transfer before the executor paid the transfer tax subject itself to a penalty which could be exacted out of its property in that State. Thereupon the executor paid the tax under protest, and brought suit to recover it back.

The question here presented is whether North Carolina can validly impose a transfer or inheritance tax upon shares of stock owned by a non-resident in a business corporation of New Jersey, because the corporation does business and has two-thirds of its property within the limits of North Carolina. We think that the law of North Carolina, by which this is attempted is invalid. It goes without

saying that a state may not tax property which is not within its territorial jurisdiction. *State Tax on Foreign Held Bonds*, 15 Wall. 300; *Louisville Ferry Company v. Kentucky*, 188 U. S. 385; *Delaware Railroad v. Pennsylvania*, 198 U. S. 341; *Union Transit Company v. Kentucky*, 199 U. S. 194; *Metropolitan Life Insurance Company v. New York*, 205 U. S. 395, 399; *United States v. Bennett*, 232 U. S. 299, 306; *International Paper Company v. Massachusetts*, 246 U. S. 135, 142; *Frick v. Pennsylvania*, 268 U. S. 473, 488.

The tax here is not upon property, but upon the right of succession to property, but the principle that the subject to be taxed must be within the jurisdiction of the state applies as well in the case of a transfer tax as in that of a property tax. A state has no power to tax the devolution of the property of a non-resident unless it has jurisdiction of the property devolved or transferred. In the matter of intangibles, like choses in action, shares of stock and bonds, the situs of which is with the owner, a transfer tax of course may be properly levied by the state in which he resides. So, too, it is well established that the state in which a corporation is organized may provide in creating it for the taxation in that state of all its shares, whether owned by residents or non-residents. *Hawley v. Malden*, 232 U. S. 1, 12; *Hannis Distillery Co. v. Baltimore*, 216 U. S. 285, 293, 294; *Corry v. Baltimore*, 196 U. S. 466; *Tappan v. Bank*, 19 Wall. 490, 503.

In this case the jurisdiction of North Carolina rests on the claim that because the New Jersey corporation has two-thirds of its property in North Carolina, the State may treat shares of its stock as having a situs in North Carolina to the extent of the ratio in value of its property in North Carolina to all of its property. This is on the theory that the stockholder is the owner of the property of the corporation, and the state which has jurisdiction of any of the corporate property has *pro tanto* jurisdiction of his shares of stock. We can not concur in this view. The owner of the shares of stock in a company is not the owner of the corporation's property. He has a right to his share in the earnings of the corporation, as they may be declared in dividends, arising from the use of all its property. In the dissolution of the corporation he may take his ~~share~~ share in what is left, after all the debts of the corporation have been paid and the assets are divided in accordance with the law of its creation. But he does not own the corporate property.

→ proportionate

In *Van Allen v. Assessors*, 3 Wall. 573, 583, the question was whether shares of stock in a national bank could be subjected to state taxation if part or all of the capital of the bank was invested in securities of the National Government declared by the statute authorizing them to be exempt from taxation by state authority. It was held that they could be so taxed. Mr. Justice Nelson, speaking for this Court, said, at p. 583:

"But, in addition to this view, the tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal; and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own. This is familiar law, and will be found in every work that may be opened on the subject of corporations. . . .

"The interest of the shareholder entitles him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of his shares; and upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property, held by the shareholder like any other property that may belong to him."

The same principle is declared in *Jellenik v. Huron Copper Company*, 177 U. S. 1, in which it was held that shares of stock in a corporation had a situs in the state creating the corporation so that they were there subject to mesne process. It is approved in *Farrington v. Tennessee*, 95 U. S. 679, 686; in *Hawley v. Malden*, *supra*, at p. 19; in *Eisner v. Macomber*, 252 U. S. 189, 208, 213, 214, and in *Des Moines Natl. Bank v. Fairweather Mayor*, 263 U. S. 103, 112.

In North Carolina and in some other States, the State constitution requires all property, real and personal, to be taxed equally. Laws have been passed exempting shares of stock in North Carolina corporations from taxation, on the ground that the property of the corporation is taxed which is held to be equivalent to taxing the shares. *Person v. Watts*, 184 N. C. 499; *Jones v. Davis*, 35 O. S. 474. But such cases grow out of state constitutional difficulties and are hardly applicable to questions of state jurisdiction of shares of foreign corporation stock. The cases of *Bronson's Estate*, 150 N. Y. 1, 8, and *In re Culver's Estate*, 145 Iowa 1, said to hold that a stockholder owns the property of the corporation, are really

authorities to the point that shares of stock in a corporation of a state have their situs for purposes of taxation in that state, as well as in the residence of the owner of the shares. But whatever the view of the other courts, that of this Court is clear, the stockholder does not own the corporate property. Jurisdiction for tax purposes over his shares can not, therefore, be made to rest on the situs of part of the corporate property within the taxing state. North Carolina can not control the devolution of New Jersey shares. That is determined by the laws of Rhode Island where the decedent owner lived or by those of New Jersey, because the shares have a situs in the state of incorporation. There is nothing in the statutory conditions on which the Tobacco Company began or continued business in North Carolina which suggests that its shareholders subjected their stock to the taxing jurisdiction of that State by the company's doing business there.

Our conclusion is in accord with the great majority of cases in the state courts where this exact question has arisen. *Welch v. Burrill*, 223 Mass. 87; *People v. Dennett*, 276 Ill. 43; *State v. Dunlap*, 28 Idaho 784; *State v. Walker*, 70 Montana 484; *In re Harkness Estate*, 83 Okla. 107. *Tyler v. Dane County*, 289 Fed. 843, contains a full and satisfactory discussion of the subject in a Wisconsin case which has been followed by the Supreme Court of Wisconsin in *Estate of Shepard*, 184 Wis. 88. See article by Professor Beale, 38 Harvard Law Review 291.

In an addendum to its opinion in this case, the Supreme Court of North Carolina suggests that the jurisdiction of the State to tax the shares of the New Jersey corporation may be based on the view that the corporation has been domesticated in North Carolina. So far as the statutes of the State show, it has been authorized to do and does business in the State and owns property therein and pays a fee for the permission to do so. It has not been re-incorporated in the State. It is still a foreign corporation and the rights of its stockholders are to be determined accordingly.

We conclude that the statute of North Carolina, above set out, in so far as it attempts to subject the shares of stock in the New Jersey corporation, held by a resident of Rhode Island, to a transfer tax deprives the executor of Briggs of his property without due process of law and is invalid.

Judgment reversed.